

V.X.Chellappan vs Mohammed Koya

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Court : Kerala

Decided On : Feb-17-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/695/2017

Appellant : V.X.Chellappan

Respondent : Mohammed Koya

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946
MACA NO. 695 OF 2017 AGAINST THE AWARD DATED 24.09.2016 IN
OPMV NO.1816 OF 2013 OF MOTOR ACCIDENT CLAIMS TRIBUNAL
,ERNAKULAM APPELLANT/PETITIONER V.X.CHELLAPPAN, AGED 59
YEARS, S/O.XAVIER,VALIYATHARA HOUSE, BY ADVS. SRI.RAHUL
SASI SMT.NEETHU PREM RESPONDENTS/RESPONDENTS 1
MOHAMMED KOYA S/O.KHADER, HOUSE NO.2/265 A,PONNAKATHU
HOUSE, KALVATHY,FORTCOCHIN, COCHIN - 682 001. 2
M.SHAMJEED S/O.HAJEEM MUTTATH, DOOR
NO.3/454,MANIYAMTHURUTH PARAMBU, MATTANCHERY,COCHIN -

682 002. 3 THE ORIENTAL INSURANCE CO.LTD. EDAPPALLY, ERNAKULAM DISTRICT - 682 020, REPRESENTED BY ITS BRANCH MANAGER. BY ADVS. SRI.A.R.GEORGE-SC SRI.YASH THOMAS MANNULLY SMT.SUMEEDA. M.S MACA NO. 695 OF 2017 2 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 17.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 695 OF 2017 3

JUDGMENT

Dated this the 17th day of February, 2025 The petitioner in O.P.(M.V.) No.1816/2013 on the file of the Motor Accident Claims Tribunal, Ernakulam, is the appellant herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The petitioner filed the above O.P. under Section 166 of the

Motor Vehicles Act, 1988, claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 29.06.2013. According to the petitioner, on 29.06.2013 at about 4.00 p.m., while he was riding a motorcycle through Thoppumpady-Kazhuthumuttu road, he was hit down by a goods autorikshaw bearing Reg.No. KL 43 D 1058 driven by 2nd respondent in a rash and negligent manner. As a result of the accident, the petitioner sustained serious injuries.

3. The 1st respondent is the owner, the 2nd respondent is the driver

and 3rd respondent is the insurer of the offending vehicle. According to the petitioner, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. is MACA NO. 695 OF 2017 4 Rs.2,40,18,000/- (limited to Rs.1,35,00,000/-)

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the oral testimonies of PWs1 to PW3 and documentary evidence Exts.A1 to A31 and C1. No evidence was adduced by the respondents.

6. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.37,90,940/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioner preferred this appeal.

8. Now the point that arises for consideration is the following: Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri. Rahul Sasi, the learned Counsel appearing for the petitioner/appellant, and Sri.A.R George, the learned Standing Counsel for the 3rd respondent.

10. The Point: In this case the accident as well as valid policy of MACA NO. 695 OF 2017 5

the offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioner is regarding the income of the petitioner as fixed by the Tribunal. According to him, the petitioner was working as contractor, earning Rs. 1,00,000 per month, but the Tribunal fixed his monthly income at Rs.22,000/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. The learned counsel relied upon Ext.A17 income tax return,

which shows that during the year 2013-2014, the annual income of the petitioner at Rs.4,49,254/-. From Ext.A17, it is also revealed that during the year 2013-2014 he had pay a sum of Rs.27,741/- towards income tax. Therefore his annual income after deducting the income tax paid will come to Rs.4,21,513/-(4,49,254-27,741). Therefore his monthly income

after deducting the income tax payable will come to Rs.35,126/- (4,21,513/12). In the above circumstances the tribunal was not justified in scaling down the monthly income of the petitioner to Rs. 22,000/-. Therefore his notional income is liable to be fixed at Rs. 35,126/-

12. In the accident the petitioner sustained comminuted open fracture lower 1/3rd right femur, fracture, dislocation right wrist, fracture fibula right M 3rd, fracture humerus right surgical neck and deformity on right femur. MACA NO. 695 OF 2017 6

13. In Ext.C1, disability certificate issued by the Medical Board his

permanent physical disability was assessed as 75%. However considering the severity of the injuries sustained by the petitioner, the tribunal has assessed his functional disability at 85%, which is not in dispute.

14. On the date of accident, the petitioner was aged 56 years.

Therefore, 10% of the monthly income is to be added towards future prospects, as held in the decision in National Insurance Co.Ltd v Pranay Sethi [(2017) 16 SCC 680] and the multiplier to be applied is 9, as held in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121. In the above circumstances, the loss of disability will come to Rs.35,47,023/-.

15. Towards loss of earning, the tribunal has awarded only Rs.

88,000/- being the income for 4 months @Rs.22,000/-. Considering the nature of the injuries sustained and the percentage of disability suffered by the petitioner, the petitioner might have lost income at least for a period of 6 months. Since the notional income of the petitioner is re-fixed at Rs. 35,126/-. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs. 2,10,756/- (35126 x 6 months).

16. Since compensation for loss of disability and loss of earning are granted, there is no necessity to award any further compensation on the MACA NO. 695 OF

2017 7 head compensation for short expectation and hence Rs.75000/- awarded on that head will be deducted.

17. Towards the head pain and sufferings, the Tribunal has awarded Rs.1,50,000/- . According to the learned counsel for the petitioner, the compensation awarded on this head is on the lower side.

18. The petitioner sustained very serious injuries in the accident

and was treated as inpatient for 75 days. Because of the injuries sustained, the percentage of disability suffered and the length of treatment undergone by the petitioner, I hold that the compensation awarded by the Tribunal on the head pain and sufferings is on the lower side and hence it is enhanced to Rs.2,00,000/-.

19. The petitioner appeared before this Court with the help of a

bystander. He is not even able to stand and walk without the assistance of a bystander. Therefore, considering the severity of the injuries sustained by the petitioner and the percentage of disability suffered by him, he is entitled to get the expenses of a bystander for the rest of his life. In the decision in Kajal v. Jagadish Chand and Others, AIR 2020 SC 776=[(2020) 4SCC413], the expenses of a bystander was fixed by the Honble Apex Court at Rs.5,000/- based on the minimum wage for skilled labour prevailing during the 2011

MACA NO. 695 OF 2017 8 period.

20. The Government of Kerala had issued notifications in the year

2009 and 2016 fixing the minimum wages of skilled labourers at Rs. 3956/- and 8,910/- respectively. The difference in the minimum wages of skilled labourer, during the period from 2009 to 2016 will come to Rs.4,954/-(8910- 3956). Therefore the average difference per year will

come to Rs.708(4,954/7). If so, the average minimum wages for skilled labours in the State of Kerala during the year 2013 will come to Rs.6,788/- which is rounded to 6800/-. Therefore towards the expenses of the bystander, the petitioner is entitled to get a sum of Rs.6,800/- per month for a period of 9 years which will come to Rs.734400/- (6800x12x9)

21. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

21. Therefore, the petitioners/ appellants are entitled to get a total compensation of Rs.57,32,179/-, as modified and recalculated above and given in the table below, for easy reference. MACA NO. 695 OF 2017 9

Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
1	Loss of earning	88,000/-	2,10,756/-
2	Transportation	50,000/-	50,000/-
3	Extra nourishment	50,000/-	50,000/-
4	Damage to clothes and articles	3,000/-	3,000/-
5	Attendant expenses	1,15,400/-	7,34,400/-
6	Treatment expenses	4,87,000/-	4,87,000/-
7	Compensation for Pain and sufferings	1,50,000/-	2,00,000/-
8	Compensation for Disfiguration	1,00,000/-	1,00,000/-
9	Compensation for disability	23,22,540/-	35,47,023/-
10	Compensation for loss of amenities	1,50,000/-	1,50,000/-
11	Compensation for short expectation	75,000/-	NIL
12	Compensation for future treatment	2,00,000/-	2,00,000/-
	Total	Rs. 37,90,940/-	57,32,179/-
	Enhanced	1941239	

22. In the result, this Appeal is allowed in part, and Respondent

No.3 is directed to deposit a total sum of Rs. 57,32,179/- (Rupees Fifty seven lakhs fifty nine thousand one hundred seventy nine Only), less the amount already deposited, if any, along with interest at the rate ordered by the MACA NO. 695 OF 2017 10 Tribunal, from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today.(enhanced compensation will carry interest @8%)

23. On depositing the aforesaid amount, the Tribunal shall disburse 25% of the entire amount, excluding court fee payable, if any, to the petitioner, forthwith.

24. The Tribunal is permitted to decide, after considering the

welfare, well being and the best interest of the petitioner, whether the balance amount is to be disbursed in full, forthwith or in installments or to be deposited in a Nationalised bank in fixed deposit in the name of the petitioner and to permit withdrawal of interest alone for the time being. Sd/- C. PRATHEEP KUMAR,
JUDGE vnk/- MACA NO. 695 OF 2017 11 APPENDIX OF MACA 695/2017
PETITIONER ANNEXURES

ANNEXURE A1 THE ORIGINAL OF INPATIENT BILL SUMMARY

DATED 27.07.2022 OF MBR MEDICAL TRUST SPECIALISTS' HOSPITAL,
ERNAKULAM

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