

Sukumaran vs Jayakumar T.

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Court : Kerala

Decided On : Feb-27-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/1456/2015

Appellant : Sukumaran

Respondent : Jayakumar T.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
THURSDAY, THE 27TH DAY OF FEBRUARY 2025 / 8TH PHALGUNA,
1946 MACA NO. 1456 OF 2015 AGAINST THE ORDER/JUDGMENT
DATED 26.11.2014 IN OPMV NO.222 OF 2009 OF MOTOR ACCIDENT
CLAIMS TRIBUNAL ,PERUMBAVOOR APPELLANT/PETITIONER:
SUKUMARAN AGED 55 YEARS S/O. GOPALAN, PADUVATHIL
HOUSE, NEDUMBASSERY VILLAGE, ATHANI KARA. BY ADVS.
SRI.REJI GEORGE SMT.ANUPAMA JOHNY
RESPONDENTS/RESPONDENTS: 1 JAYAKUMAR T. S/O. THOMSON
J, KARIPPAMKODE HOUSE, 8/501, SREEKARYAM KARA,
PANTHALAKODE P.O., THIRUVANANTHAPURAM - 695 001. 2 THE

NEW INDIA ASSURANCE CO. LTD REP. BY GENERAL MANAGER, 2ND FLOOR, REMA PLAZA, SS COIL ROAD, THAMPANOR, TRIVANDRUM - 695 001. BY ADVS. SRI.VIPIN NARAYAN SRI.THOMAS MATHEW NELLIMOOTTIL SRI.V.C.SARATH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 27.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner in O.P.(M.V.) No.222/ 2009 on the file of the Motor Accident Claims Tribunal, Perumbavoor, 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 11.09.2008. According to the petitioner, on 11.09.2008 at about 8.15 p.m., while he was walking along the side of the road, a car bearing reg.no.KL-01/AJ-9602 driven by the 1st respondent in a rash and negligent manner, hit the petitioner and as a result of the accident, the petitioner sustained injuries.

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

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 Rs.2,16,000/- limited to Rs.1,75,000/-.

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 testimony of PW1 and documentary evidence Exts.A1 to A9.

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.90847/- 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.Reji George, the learned Counsel appearing for the petitioner/appellant, and Sri. Thomas Mathew Nellimoottil, the learned Standing Counsel for the 2nd respondent.

10. The Point: In this case the accident as well as valid policy

of 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 welder, earning Rs.4500/- per month, but the Tribunal fixed his monthly income at Rs.3500/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. As per the dictum laid down by the Honble Supreme

Court in the decision in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236], the notional income of a coolie, in the year 2008 will come to Rs.6500/-. Since the petitioner could not prove his job or income as claimed in the OP, in the light of a dictum laid down in the decision of the Honble Supreme Court in Ramachandrappa (supra) , his notional income is liable to be fixed as that of a coolie, at Rs.6500/-.

12. In the accident the petitioner sustained the following injuries: Segmental fracture shaft of left humerus Multiple abrasions on right knee and foot.

13. Ext.A1 disability certificate shows that the petitioner

suffered 5% permanent physical disability. It was issued by the medical board, and one of the doctors was examined as PW1. The Tribunal, however, scaled down the percentage of disability of the petitioner to 3%, without assigning valid and cogent reasons. The law is settled that, if the Tribunal is not satisfied with the disability certificate produced by the petitioner, the remedy is to refer him to a medical board or higher Authority.(See Manikantan G. v. Janardhanan Nair and Others, 2021 (5)KHC 305). Having not done so, the Tribunal was not justified in scaling down the percentage of disability from what is shown in the disability certificate. I do find any grounds to disbelieve the said disability and as such the permanent physical disability of the petitioner is fixed as 5%.

14. On the date of accident, the petitioner was aged 50 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 13, 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.55770/-.

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

Rs.4500/-. 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 3 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.19500/- (6500 x 3 months).

16. Towards the head pain and sufferings, the Tribunal has

awarded Rs.20000/-. Towards 'loss of amenities of life' Rs.12000/- was awarded and towards 'extra nourishment' Rs.1250/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

17. The petitioner sustained very serious injuries in the

accident and was treated as inpatient for 14 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 heads pain and sufferings, 'loss of amenities of life' and 'extra nourishment' are on the lower side and hence they are enhanced to Rs.35000/-, Rs.25000/- and Rs.4000/- respectively.

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

19. Therefore, the petitioners/ appellants are entitled to get a total compensation of Rs.1,74,547/-, as modified and recalculated above and given in the table below, for easy reference. Sl.

No	Head of Claim	Amount awarded by	Amount
Total 90847	1,74,547	Enhanced/reduced	83700

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

Respondent No.2 is directed to deposit a total sum of Rs.1,74,547/- (Rupees One Lakhs Seventy Four Thousand Five Hundred and Forty Seven Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today.

21. In the impugned award dated 26.11.2014, the tribunal found

that the offending car did not have valid fitness certificate on the date of the accident and therefore, the tribunal permitted the 2nd respondent to recover the compensation from the 1st respondent. However, the learned counsel for the 1st respondent produced a copy of the revised award of the tribunal dated 20th March 2017 stating that subsequently the 1st respondent has filed IA.No.3933/2016 and produced the registration particulars of the car which contain endorsement to the effect that the car had valid fitness certificate on the date of the accident. Therefore, in the revised award, the tribunal has set aside the permission granted

to the 2nd respondent to recover the compensation from the 1st respondent. Therefore, the permission granted to the 2nd respondent to recover the compensation from the 1 st respondent is set aside. The 2nd respondent is directed to deposit the amount of Rs.1,74,547/-.

22. On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioner, excluding court fee payable, if any, without delay, as per rules. Sd/- C. PRATHEEP KUMAR, JUDGE Pvv

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