

Babu vs Babu

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Court : Kerala

Decided On : Feb-27-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/1595/2015

Appellant : BABU

Respondent : BABU

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. 1595 OF 2015 AGAINST THE AWARD DATED
30.04.2014 IN OPMV NO.1776 OF 2008 OF MOTOR ACCIDENT
CLAIMS TRIBUNAL, PERUMBAVOOR APPELLANT/PETITIONER:

BABU AGED 38 YEARS S/O.RAGHAVAN, NEDUVELIL HOUSE,
AYYAMPUZHA P.O., AYYAMPUZHA VILLAGE, ALUVA TALUK. BY
ADVS. SRI.REJI GEORGE SMT.ANUPAMA JOHNY
RESPONDENTS/RESPONDENT NO.1 & 3: 1 BABU S/O.LAZAR,
CHALACKAL HOUSE, M.G.KAVU P.O., THRISSUR DISTRICT - 680
001 2 UNITED INDIA INSURANCE CO.LTD. IV FLOOR,

PATHAYAPURA, NEAR RAGAM THEATRE, ROUND SOUTH, THRISSUR DISTRICT-680001. 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.1776/2008 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 13.11.2008. According to the petitioner, on 13.11.2008 at about 11.15 a.m., while he was riding pillion on a motor cycle, a hook on the right side body of the lorry bearing reg.no.KL B-4488 driven by the 2nd respondent in a rash and negligent manner hit on his forehead and as a result of the accident, the petitioner sustained serious injuries.

3. The 1st respondent is the owner , the 2 nd 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 Rs.6,15,000/- limited to Rs.3,00,000/-.

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 documentary evidence Exts.A1 to A11, B1, and X1.

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.2,14,473/- 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.Unni K.K.(Ezhumattoor), the learned Standing Counsel for the 3rd 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 wood cutter, earning Rs.4500 per month, but the Tribunal fixed his monthly income at Rs.3500/-.

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

Court in the decision in Ramachandrappa v. Manger, 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/-. Therefore, the learned counsel prayed for fixing the notional income of the petitioner at Rs.6500/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable. Since the notional income of a coolie, in the year 2008 will come to Rs.6500/-, in order to award just and reasonable compensation, in the light of a dictum laid down in the decision of the Honble Supreme Court in Ramachandrappa (supra), the notional income of the petitioner is liable to be fixed as that of a coolie, at Rs.6500/-.

12. In the accident the petitioner sustained the following injuries:

(1) 10 cm long lacerated wound right forehead along left supra orbital area

(2) Abrasion lower limbs

(3) Depressed fracture frontal bone right

(4) Frontal extra dural hematoma right

(5) Frontal SDH

(6) Sub arachnoid bleed

(7) Fracture right orbit

(8) Fracture right zygoma

(9) Fracture right maxillary sinus

13. Ext.X1 disability certificate shows that the petitioner

suffered 10% permanent physical disability. It was issued from Government Medical College, Thrissur. The Tribunal, has accepted the permanent physical disability of the petitioner as such and hence, I do not find any grounds to disbelieve the same. Therefore, the permanent physical disability of the petitioner is accepted as 10%, as fixed by the Tribunal.

14. On the date of accident, the petitioner was aged 38 years.

Therefore, 40% 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 15, 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.163800/-.

15. Towards loss of study, the tribunal has awarded

Rs.14000/- being the income for 4 months @Rs.3500/-. Since the notional income of the petitioner is re-fixed at Rs.6500/-, towards loss of study he is entitled to get a sum of Rs.26000/- (6500x4 months).

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

awarded Rs.45000/-. Towards 'loss of amenities of life' Rs.30000/- 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 serious injuries in the accident

and was treated as inpatient for 8 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 and 'loss of amenities of life' are on the lower side and hence they are enhanced to Rs.60000/-, and Rs.50000./- 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.362273/-, as modified and recalculated above and given in the table below, for easy reference. Sl.

No	Head of Claim	Amount awarded by	Amou
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20. In the result, this Appeal is allowed in part, and

Respondent No.3 is directed to deposit a total sum of Rs.362273/- (Rupees Three Lakhs Sixty Two Thousand Two Hundred and Seventy Three Only), less the amount already deposited, if any, along with interest @ 8% per annum, from the date of the petition till deposit/realisation, excluding interest for a period of 266 days, the period of delay in filing the appeal, with proportionate costs, within a period of two months from today.

21. In the award, the 3rd respondent is permitted to recover

the compensation from the 1st respondent and the 2nd respondent did not have valid driving license. The offending lorry had no valid fitness certificate on the date of the accident. Though notice was served, respondents 1 & 2 did not turn up and as such, i do not find any grounds to interfere with the above permission granted to the 3rd respondent.

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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