

Devarajan vs Chinnamma Mathai (Deleted)

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Court : Kerala

Decided On : Feb-14-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/1615/2015

Appellant : Devarajan

Respondent : Chinnamma Mathai (Deleted)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
FRIDAY, THE 14TH DAY OF FEBRUARY 2025 / 25TH MAGHA, 1946
MACA NO. 1615 OF 2015 OPMV NO.703 OF 2010 OF MOTOR
ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
APPELLANT/PETITIONER: DEVARAJAN S/O RANGA SWAMI, NO.20,
DURAI SWAMY STREET LAYOUT, AVARAMPALAYAM P.O.,
COIMBATORE DISTRICT. BY ADV SRI.A.N.SANTHOSH SRI. P.V.
BABY FOR APPELLANT RESPONDENT/RESPONDENTS 1 & 3:

1 CHINNAMMA MATHAI (DELETED) W/O MATHAI, MEKKATTU
HOUSE, VELLIKULANGARA P.O., 690104. (RESPONDENT NO. 1
DELETED FROM THE PARTY ARRAY AT THE RISK OF THE

APPELLANT AS PER ORDER DATED 13.10.2022 IN MACA 1615/2015). 2 THE UNITED INDIA INSURANCE COMPANY LTD. IRINJALAKUDA-680121. BY ADV DEEPA GEORGE, STANDING COUNSEL THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 14.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 14th day of February, 2025 The petitioner in O.P.(M.V.) No.703/2010 on the file of the Motor Accident Claims Tribunal, Irinjalakuda 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. 21.8.2007. According to the petitioner, on 21.8.2007 at about 7.30 a.m., while he was driving his goods carriage through the national Highway 47 of Paliakkara region, a stage carriage bearing registration No.KL-8AH-9797 driven by the 2nd respondent in a rash and negligent manner came from the opposite direction and hit against the goods carriage and as a result of which he 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 Rs.10,11,000/- (limited to Rs.7,00,000).

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 PWs 1 to 3 and documentary evidence Exhibits A1 to A12. 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.2,82,020/- 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. P.V. Baby, the learned Counsel appearing for the petitioner/appellant, and Smt. Deepa George, 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 driver, earning Rs.10,000/- per month, but the Tribunal fixed his monthly income at Rs.3,500/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. It is true that the petitioner could not prove his income, as claimed

in the OP. However PW2 was examined to prove that the petitioner was employed as a driver. From the evidence of PW2 it is proved that the petitioner was a driver by profession. 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 2007 will come to Rs.6,000/- Therefore, the petitioner being a driver by profession, his notional income is fixed at Rs.7,500/-, for the purpose of computing the loss of disability.

12. In the accident the petitioner sustained the following injuries: dislocation of (R) hip, fracture ischaemic and floor of acetabulum (R), fracture (L) inferior ramus, comminuted fracture of both bones of (R) leg with punctured wound, dislocation meta tarsal with fracture middle phalanx in the toe and dislocation 3rd MTP foot.

13. As per Exhibit A11 disability certificate issued by PW3, his

permanent disability was assessed as 32%, while the functional disability was assessed as 79%. However the Tribunal has scaled down the percentage of disability to 15%. On the other hand, the learned counsel for the petitioner would argue that the petitioner being a heavy driver by profession, after the accident, he is unable to do the job of a heavy driver and as such his functional disability assessed by PW3 is correct and hence the Tribunal was not justified in scaling down the disability percentage. On the other hand, the learned counsel for the 3rd respondent would argue that Exhibit A11 was issued by a private doctor and that though the petitioner is a resident of Tamil Nadu, PW3 is a resident of Kerala and Exhibits A11 could not be believed.

14. In this case, PW3, the Doctor who issued Exhibit A11 disability

certificate was examined before the Court. He had given detailed description about the injuries sustained by the petitioner and the observation made by him at the time of examination and reasons for assessing the permanent physical disability and functional disability. From the medical records, it appears that

altogether, the petitioner sustained eight fractures and he was hospitalised for a period of 28 days. During cross examination PW3 deposed that though all the fractures were united, there are projections on all those fractures. In the light of the fact that the petitioner sustained eight fractures to both lower limbs and hip, and he is a heavy driver by profession, I do not find any grounds to disbelieve the permanent physical disability assessed by PW3 at 32%. Since the petitioner is a heavy driver his functional disability will be much more than his permanent physical disability. Therefore, considering the facts, for the purpose of assessing the loss of disability, I fix the functional disability of the petitioner at 40%.

15. On the date of accident, the petitioner was aged 31 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 16, 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.8,06,400/-

16. Towards loss of earning, the Tribunal has awarded only Rs.17,500/- being the income for 5 months @Rs.3,500/-. Learned counsel for

the petitioner relying upon Exhibit A8 certificate issued by the Consultant Orthopaedic Surgeon, St. Joseph Hospital, to the effect that the petitioner requires treatment for a period of 2 years, would argue that the loss of earnings awarded is on the lower side. Considering the nature of the injuries sustained and the percentage of disability suffered by the petitioner including eight fractures and he was treated as inpatient for a period of 28 days and he is a heavy driver by profession, I hold that the petitioner might have lost income at least for a period of 12 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs. 90,000/- (7,500 x 12 months).

17. Towards the head pain and sufferings, the Tribunal has awarded

Rs.20,000/-. Towards 'loss of amenities of life' Rs.20,000/- was awarded, towards bystander expenses Rs.4200/- and towards 'extra nourishment' Rs.500/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

18. The petitioner sustained very serious injuries in the accident and

was treated as inpatient for 28 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', 'bystander expense' and 'extra nourishment' are on the lower side and hence they are enhanced to Rs.75,000/-, Rs.50,000/-, Rs.5,600/- and 5,000/- respectively. Another Rs.15,000/- awarded by

the Tribunal on the head 'loss of earning power' will be deducted.

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

20. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.11,29,720/-, as modified and recalculated above and given in the table below, for easy reference: Sl.

No.	Head of Claim	Amount awarded by
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21. In the result, this Appeal is allowed in part, and Respondent No. 3

is directed to deposit a total sum of Rs.1129720/- (Rupees eleven lakh twenty nine thousand seven hundred and twenty 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.

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. if any, without delay, as per rules. Sd/- C. PRATHEEP KUMAR, JUDGE sou.

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