

Sijohn vs Xavier.N.P

Sijohn vs Xavier.N.P

SooperKanoon Citation : sooperkanoon.com/1280711

Court : Kerala

Decided On : Mar-05-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/579/2014

Appellant : Sijohn

Respondent : Xavier.N.P

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
WEDNESDAY, THE 5TH DAY OF MARCH 2025 / 14TH PHALGUNA,
1946 AGAINST THE AWARD DATED 09.10.2013 IN OPMV NO.292 OF
2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
APPELLANT/PETITIONER :- SIJOHN, S/O JOHNSON, ACHANDI
HOUSE, MUTHRATHIKARA P.O. PARAPPUKARA, THRISSUR
DISTRICT. BY ADVS. SRI.V.BINOY RAM SMT.SAJITHA P.SOMAN
RESPONDENTS/RESPONDENTS :- 1 XAVIER.N.P S/O PAUOOSE,
NJAREKADAN HOUSE, P.O. POTTA, THRISSUR DISTRICT, PIN:680
722. 2 THE MANAGER RELIANCE GENERAL INSURANCE CO.LTD.,
GLOBAL PLAZA, OPP. NEW RAILWAY PLATFORM, P.O. POOTHOLE,

PIN:680 004. BY ADV SRI.K.B.RAMANAND THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner in O.P.(M.V.) No.292/2009 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 12.08.2008. According to the petitioner, on 12.08.2008 at about 10.30 a.m., while he was walking through Aranattukara - Kanjani road, a motorcycle bearing Registration No.KL-8-AG-2238 ridden by the 1st respondent in a rash and negligent manner knocked him down. As a result of the accident, the petitioner sustained serious injuries.

3. 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.1,50,000/-.

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 A6.

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.74,640/- 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.V.Binoy Ram, the learned Counsel appearing for the petitioner/appellant, and Sri.K.B.Ramanand, 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 a Aluminium Fabricator, earning Rs.5,000/- per month, but the Tribunal fixed his monthly income at Rs.3,500/-.
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.6,500/-. 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 abrasion on forehead, chin and forearm, lacerated wound on nose 2x0.5x0.5 cm and fracture of distal right radius.
13. Ext.A6 disability certificate shows that the petitioner suffered 5% permanent physical disability. It was issued by an orthopaedic surgeon, Taluk Headquarters Hospital, Chalakkudy. The Tribunal, however, scaled down the percentage of disability of the petitioner to 3%, with the consent of both the counsel. Therefore, I do not find any grounds to interfere with the percentage of

disability fixed by the tribunal with the consent of both the parties.

14. On the date of accident, the petitioner was aged 20 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 18, 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.58,968/-.

15. Towards loss of earning, the tribunal has awarded only Rs.7,000/-

being the income for 2 months @Rs.3,500/-. 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 4 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.26,000/- (6,500 x 4 months).

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

Rs.10,000/-. Towards 'loss of amenities of life' Rs.10,000/- was awarded, towards transportation expenses Rs.500 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.

17. The petitioner sustained very serious injuries in the accident and he

was treated as inpatient for 7 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', transportation expenses and 'extra nourishment' are on the lower side and hence they are enhanced to Rs.40,000/-, Rs.25,000/-, Rs.2,000/- and Rs.3,000/- 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 petitioner/appellant is entitled to get a total compensation of Rs.1,81,448/-, as modified and recalculated above and given in the table below, for easy reference.

Sl.	Amount awarded by Tribunal in Appeal (in Rs.)	Amount Awarded (in Rs.)	No.	Head of Claim	
1	7,000	26,000	2	Transportation expenses	
500	2,000		3	Medical & miscellaneous	
		24,930	24,930	4	Extra nourishment
500	3,000		5	Damage to clothing	
		500	500	6	Bystander expenses
1,050	1,050		7	Pain and sufferings	
		10,000	40,000	8	Permanent disability
20,160	58,968		9	Loss of amenities	
		10,000	25,000		Total
					74,640
					1,81,448
					Enhanced to Rs. 1,06,808

20. In the result, this Appeal is allowed in part, and the 2nd respondent is directed to deposit a total sum of Rs.1,81,448/- (Rupees One Lakh Eighty One

Thousand Four Hundred and Forty Eight 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. 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 SMA

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com