

Shaiju vs Joymon

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Court : Kerala

Decided On : Feb-28-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/845/2016

Appellant : Shaiju

Respondent : Joymon

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR FRIDAY, THE 28TH DAY OF FEBRUARY 2025/9TH PHALGUNA, 1946 MACA NO. 845 OF 2016 AGAINST THE ORDER/JUDGMENT DATED 30.10.2015 IN OPMV NO.207 OF 2012 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR. APPELLANT: SHAIJU, S/O.GEORGE, ARACKAPARAMBIL HOUSE, CHRANDRAPURA, MANJAPPRA P.O., KALADY, PIN - 683 581. BY ADVS. P.M.ARUN DAS josephgopuran RESPONDENTS: 1 JOYMON, S/O.LOLAPPAN, MADAVANA HOUSE, WEST COLONY, MALAYATTOOR P.O., KALADY - 683 587. 2 CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LTD. 2ND FLOOR, DARE HOUSE, NSC BOSE ROAD, CHENNAI - 600 001. BY ADVS. SRI.P.JACOB MATHEW SRI.MATHEWS JACOB SR. -2- THIS MOTOR

ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

Dated this the 28th day of February, 2025 The petitioner in O.P.(M.V.) No.207/2012 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 01.12.2011 According to the petitioner, on 01.12.2011 at about 6.15 a.m., while he was riding a motorcycle along the Angamaly- Manjappa road a Swaraj Mazda Tipper Lorry bearing Reg. No. KL- 5/L-1449 driven by the 2nd respondent in a rash and negligent

manner hit on the motorcycle. 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 Rs.41,85,000/- limited to Rs.15,00,000/-. -4-

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 A18 series, Ext.C1 and C2. 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.5,30,216/- 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.A.N.Santhosh, the learned Counsel appearing for the petitioner/appellant, and Sri.P.Jacob Mathew, the learned Standing Counsel for the 3rd respondent.

10. The Point: In this case the accident as well as valid insurance policy of the offending vehicle are admitted. One of the -5-

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.15,000/- per month, but the Tribunal fixed his monthly income at Rs.7,000/-.

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 2011 will come to Rs.8,000/-. The petitioner has produced Ext.A18 salary certificate issued by PW1. According to PW1, he had contract work in Kochin Shipyard and that the petitioner was working under him and Ext.A18 is the salary certificate issued by him to the petitioner. According to PW1, the petitioner was getting a salary of Rs. 15,000/- per month. However, the tribunal has not accepted the evidence of PW1 and fixed the notional income at Rs. 7,000/-.

12. During the pendency of the appeal, the petitioner

produced Annexure A2 certificate issued from Technical Education Society of Vidya stating that the petitioner obtained TIG/ARC Welding certificate course in

March 2007 in Second Class. Annexure A3 is the Access Card for contractors workmen engaged -6-

in Kochin Shipyard Ltd., in the name of the petitioner. From Annexure A2 and A3, it is revealed that the petitioner is a technically qualified welder since 2007. Annexure A1 is the copy of the National Trade Certificate in the name of the petitioner, showing that he has completed the course of training at Balanagar Technical Institute ITC, Mookkannur in the trade Welder (Gas and Electric) in July 1999. Therefore from the evidence of PW1 and from Annexure A1 to A3, it is proved that the petitioner was working as welder under PW1 in Kochin Shipyard. In the above circumstance, I do not find any grounds to disbelieve the testimony of PW1 that the petitioner was getting a monthly income of Rs. 15,000/-. As such the notional monthly income of the petitioner is fixed at Rs. 15,000/-.

13. In the accident the petitioner sustained Type IIIB

open fracture both bone right leg, lacerated wound right knee and fracture Ppx ring finger right hand. The petitioner was treated as in patient for a total period of 70 days in six sessions. The details of the treatment undergone by the petitioner is described in the paragraph 15 of the award as follows: Ext.A14 also shows that the petitioner was admitted in the hospital on 1.12.2011 and was discharged on 23.12.2011. Ext.A15 photographs show external ring fixator to the right leg of the - 7-

petitioner. Ext. A16 contains four discharge summaries, the first one for the period from 1.12.2011 to 23.12.2011. which shows that the petitioner had sustained Type IIIB open fracture both bones right leg, comminuted with bone loss, lacerated wound right knee, fracture PPX ring finger right hand. Wound debridement and external fixator application to right tibia was done. The petitioner was readmitted in the hospital on 3.1.2012 with bone defect right leg M/3rd and bifocal ilizarov osteosynthesis right leg was done, and

was discharged on 23.1.2012. As per the third discharge summary

the petitioner was readmitted for the period from 23.7.2012 to 28.7.2012 for revision ilizarov bone grafting/ The petitioner was admitted in the hospital on 1.4.2013 for removal of Ilizarov ring fixator and was discharged on 8.4.2013.

14. As per Exhibit.C2 disability certificate the

petitioner suffered 14% permanent physical disability. It was issued by the medical board. 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 14%, as fixed by the Tribunal.

15. On the date of accident, the petitioner was aged 31 -8-

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.5,64,480/-

16. From the evidence it is revealed that though the

accident was occurred on 01.12.2011. The petitioner was treated as inpatient for a total period of 70 days, in six sessions and in the meantime bifocal ilizarov osteosyntheses right leg was done on 05.01.2012. Thereafter on July 2012 revision of Ilizarov bone grafting was made and in April 2013 he was again admitted for removal of Ilizarov ring fixator. He was discharged from the

hospital finally on 08.04.2013. The petitioner continued his treatment even thereafter and during the pendency of this appeal he has produced additional medical bills worth Rs. 1,09,671/-. In the above circumstance, towards loss of earning, the petitioner is entitled to get the notional income at least for a period of 16 months, till April 2013, which will come to Rs. 2,40,000/- (15,000 x 16).

17. Towards bystander expense the petitioner was -9- awarded Rs. 13,500 @ 250 per 57 days. Since he was treated a inpatient for a total period of 70 days he is

entitled to get an amount of Rs.17,500/- (250 x 70).

18. Towards the head pain and sufferings, the

Tribunal has awarded Rs.40,000/-. Towards 'loss of amenities of life' Rs.25,000/- was awarded and towards 'extra nourishment' Rs.2,000/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

19. The petitioner sustained very serious injuries in the

accident and was treated as inpatient for 70 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 as Rs. 2,00,000/- , 2,00,000 and 20,000/- respectively.

20. As early as on 21.01.2024, the petitioner has

produced additional bills 52 in numbers for a total sum of Rs. 1,09,671/- as Annexures A7 to A58. Though, sufficient opportunity was given, no objection was raised against these bills. In the above circumstances, I do not find any grounds to disbelieve the additional -10-

bills worth Rs. 1,09,671/- produced by the petitioner and as such towards additional medical expense a sum of Rs. 1,09,671/- is allowed. Even at this stage the learned standing counsel for the 2 nd respondent sought for more time for getting approval from the company. Since, more than 14 months elapsed after the production of these bills, I am not inclined to grant more time for the approval of the company.

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.

22. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.15,43,207/-, as modified and recalculated above and given in the table below,

for easy reference: Sl.

No	Head of Claim	Amount awarded	Amount
(1,85,556/- + 1,09,671)	7 Pain and sufferings	40,000/- 2,00,000/- -11-	8 Loss of amenities etc. 25,000/- 2,00,000/- 9 Permanent disability 1,88,160/- 5,64,480/-
Total	5,30,216/- 15,43,207/-	Enhanced Rs.10,12,991/-	

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

Respondent No.3 is directed to deposit a total sum of Rs.15,43,207/- (Rupees fifteen lakhs forty three thousand two hundred and seven only), less the amount already deposited, if any, along with interest @ 9% per annum, from the date of the petition till deposit/realisation, within a period of two months from today. (Enhanced compensation will carry interest @8%)

24. 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 ADS -12- APPENDIX OF MACA 845/2016 PETITIONER ANNEXURES Annexure A1 3. THE TRUE COPY OF THE NATIONAL TRADE CERTIFICATE ISSUED TO THE APPELLANT QUALIFYING HIM TO BE A WELDER (GAS AND ELECTRIC) DATED 26.08.2002 Annexure A2 THE TRUE COPY OF THE CERTIFICATE ISSUED TO THE APPELLANT BY THE TECHNICAL EDUCATION SOCIETY OF INDIA QUALIFYING HIM TO BE A TIG/ ARC WELDER DATED 30.04.2007 Annexure A3 THE ORIGINAL ACCESS CARD ISSUED TO THE APPELLANT BY THE COCHIN SHIPYARD

Annexure A4 THE TRUE COPY OF THE DISCHARGE SUMMARY

ISSUED FROM WEST FORT HITECH HOSPITAL DATED 10.10.2016

Annexure A5 THE TRUE COPY OF THE DISCHARGE SUMMARY

ISSUED FROM ASWINI HOSPITAL LTD. DATED 01.02.2017 Annexure A6 THE TRUE COPY OF THE TREATMENT CERTIFICATE ISSUED BY SUN MEDICAL RESEARCH CENTRE DATED 03.06.2017 Annexure A7 THE ORIGINAL

MEDICAL BILL NO. 14243 DATED 27.09.2016 Annexure A8 THE ORIGINAL
MEDICAL BILL NO. 34962 DATED 29.09.2016 Annexure A9 THE ORIGINAL
MEDICAL BILL NO. 7904 DATED 29.09.2016 Annexure A10 THE ORIGINAL
MEDICAL BILL NO.13220 DATED 29.09.2016 Annexure A11 THE ORIGINAL
MEDICAL BILL NO. 34842 DATED 29.09.2016 -13- Annexure A12 THE
ORIGINAL MEDICAL BILL NO. 34990 WITH DATED 29.09.2016 Annexure A13
THE ORIGINAL MEDICAL BILL NO.8126 WITH DATED 04.10.2016 Annexure
A14 THE ORIGINAL MEDICAL BILL NO. 36018 DATED 04.10.2016 Annexure
A15 THE ORIGINAL MEDICAL BILL NO. 36607 DATED 07.10.2016 Annexure
A16 THE ORIGINAL MEDICAL BILL NO. 8272 DATED 07.10.2016 Annexure A17
THE ORIGINAL MEDICAL BILL NO. S 35205 DATED 18.10.2016 Annexure A18
THE ORIGINAL MEDICAL BILL NO. 16056 WITH DATED 18.10.2016 Annexure
A19 THE ORIGINAL MEDICAL BILL WITH NO. 8749 DATED 18.10.2016
Annexure A20 THE ORIGINAL MEDICAL BILL WITH NO. 38739 DATED
18.10.2016 Annexure A21 THE ORIGINAL MEDICAL BILL WITH NO. 38740 THE
DATED 18.10.2016 Annexure A22 THE ORIGINAL MEDICAL BILL WITH
NO.71956 THE DATED 28.10.2016 Annexure A23 THE ORIGINAL MEDICAL
BILL NO. 17385 DATED 03.11.2016 Annexure A24 THE ORIGINAL MEDICAL
BILL WITH NO. 9419 DATED 03.11.2016 Annexure A25 THE ORIGINAL
MEDICAL BILL NO. 41723 DATED 03.11.2016 Annexure A26 THE ORIGINAL
MEDICAL BILL NO.16239 DATED 03.11.2016 -14- Annexure A27 THE ORIGINAL
MEDICAL BILL NO.9925 DATED 14.11.2016 Annexure A28 THE ORIGINAL
MEDICAL BILLS NO. 43644 DATED 14.11.2016 Annexure A29 THE ORIGINAL
MEDICAL BILL NO.79408 DATED 14.11.2016 Annexure A30 THE ORIGINAL
MEDICAL BILLNO.83073 DATED 22.11.2016 Annexure A31 THE ORIGINAL
MEDICAL BILLNO.19361 DATED 30.11.2016 Annexure A32 THE ORIGINAL
MEDICAL BILL NO. 10592 DATED 30.11.2016 Annexure A33 THE ORIGINAL
MEDICAL BILL NO.22498 DATED 07.01.2017 Annexure A34 THE ORIGINAL
MEDICAL BILL NO.096557 DATED 30.01.2017 Annexure A35 THE ORIGINAL
MEDICAL BILLNO.064003 DATED 30.01.2017 Annexure A36 THE ORIGINAL
MEDICAL BILL NO.021326 DATED 30.01.2017 Annexure A37 THE ORIGINAL
MEDICAL BILL NO.016424 DATED 30.01.2017 Annexure A38 THE ORIGINAL
MEDICAL BILLNO.064107DATED 31.01.2017 Annexure A39 THE ORIGINAL

MEDICAL BILL NO.144866 DATED 31.01.2017 Annexure A40 THE ORIGINAL
MEDICAL BILL NO. 144927 DATED 31.01.2017 Annexure A41 THE ORIGINAL
MEDICAL BILL NO.13497 DATED -15- 01.02.2017 Annexure A42 THE ORIGINAL
MEDICAL BILLNO.021256 DATED 01.02.2017 Annexure A43 THE ORIGINAL
MEDICAL BILLNO.145641 DATED 01.02.2017 Annexure A44 THE ORIGINAL
MEDICAL BILL NO.019952 DATED 06.02.2017 Annexure A45 THE ORIGINAL
MEDICAL BILLNO.147919 DATED 06.02.2017 Annexure A46 THE ORIGINAL
MEDICAL BILL NO. 022605 DATED 16.02.2017 Annexure A47 THE ORIGINAL
MEDICAL BILLNO.152870 DATED 16.02.2017 Annexure A48 THE ORIGINAL
MEDICAL BILLNO.144898 DATED 31.01.2017 Annexure A49 THE ORIGINAL
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MEDICAL BILLNO.115530 DATED 30.03.2017 Annexure A54 THE ORIGINAL
MEDICAL BILLNO.OP/25716 DATED 03.06.2017 Annexure A55 THE ORIGINAL
MEDICAL BILLNO. OP/25700 DATED 03.06.2017 -16- Annexure A56 THE
ORIGINAL MEDICAL BILLNO.30935 DATED 03.06.2017 Annexure A57 THE
ORIGINAL MEDICAL BILL NO.OP/25896 DATED 03.06.2017 Annexure A58 THE
ORIGINAL MEDICAL BILL NO. 2690 DATED 15.06.2017 STATEMENT OF BILLS
STATEMENT OF BILLS

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