

Praneesh vs P I Mohanan

Praneesh vs P I Mohanan

SooperKanoon Citation : sooperkanoon.com/1280824

Court : Kerala

Decided On : Feb-04-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/911/2014

Appellant : Praneesh

Respondent : P I Mohanan

Judgement :

2025:KER:12212

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
TUESDAY, THE 4TH DAY OF FEBRUARY 2025 / 15TH MAGHA, 1946 MACA
NO. 911 OF 2014 AGAINST THE AWARD DATED 30.04.2013 IN OPMV NO.241
OF 2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL & SPECIAL COURT FOR
E.C. ACT CASES, THRISSUR APPELLANT: PRANEESH AGED 26 YEARS S/
PRASAD, RESIDING AT MADATHIPARAMBIL HOUSE, P.O. KUNNAKULAM,
THRISSUR DISTRICT. BY ADV SRI.T.C.SURESH MENON RESPONDENTS: 1 P
I MOHANAN S/O. INNAYAKKAN, RESIDING AT PAKKATH HOUSE, P.O.
CHOWANNUR, KUNNAMKULAM, THRISSUR DISTRICT, PIN-680503. 2 VINOD
S/O. SUNNY, RESIDING AT VALAYANAD VEEDU, KOTTAYIL ROAD, P.O.

KUNNAMKULAM, THRISSUR-680503. 3 UNITED INDIA INSURANCE COMPANY LIMITED DIVISIONAL OFFICE, PARK HOUSE, ROUND NORTH, THRISSUR- 680001. BY ADVS. SRI.MAHESH V.MENON SRI.S.ARUN RAJ- SC MACA NO. 911 OF 2014 2 2025:KER:12212 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 911 OF 2014 3 2025:KER:12212

JUDGMENT

Dated this the 4th day of February, 2025 The 1st respondent in O.P.(M.V.) No.241/ 2006 on the file of the Motor Accident Claims Tribunal, Thrissur, 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 13.12.2005. According to the petitioner, on 13.12.2005 at about 4.30 a.m, while he was traveling in an autorickshaw bearing Reg.No, KL-8/F 1873, the 2nd respondent had driven the same in a rash and negligent manner and dashed against one tanker lorry. As a result of the accident, the petitioner sustained serious injuries.

3. The 1st respondent is the R.C owner, the 2nd respondent is the

driver and 3rd respondent is the insurer of the autorickshaw. 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 MACA NO. 911 OF 2014 4 2025:KER:12212 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 of Exts.A1 to A8, and Ext.B1 were marked.
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.96,967(Rounded to 97,000/-) and directed the insurer to pay the same.
7. Aggrieved by the quantum of compensation awarded by the Tribunal, the 1st respondent 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. T.C Suresh Menon represented by A.R Nimod, the learned Counsel appearing for the petitioner/appellant, Sri. Mahesh V. Menon, the learned Counsel for the 1st respondent and Sri. S Arun Raj, learned Standing counsel appearing 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 MACA NO. 911 OF 2014 5 2025:KER:12212 Salesman and shoe maker, earning Rs. 4000/- per month, but the Tribunal fixed his monthly income at Rs.3000/-. 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 2005 will come to Rs.5000/-. 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.5000/-.

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

Comminuted fracture capitulum of left humerus at elbow and frames loss, comminuted fracture coronoid process of left ulna at elbow, displaced intra articular fracture coronoid process of left elbow, open reduction and internal fixation done under general anesthesia.

13. As per Ext. A8, disability certificate the condition of the patient is showing as follows: 1. Surgical scars over the (L)elbow

2. Range of flexion of the (L)elbow is only 1000

3. Fixed flexion deformity of 20 of the (L)elbow

4. Ulnar nerve palsy(partial) of the little and ring fingers of the (L)hand

5. Difficulty in lifting weights with the (L)hand which makes it difficult for him to work as a salesman MACA NO. 911 OF 2014 6 2025:KER:12212

6. Pain and difficulty (L)arm and elbow on strenuous activities

7. Radiologically, maluniting fractures of the

capitellum and coronoid process, implants remaining in situ The whole body permanent disability has been calculated using McBride scale as follows: % for intraarticular fracture capitellum and coronoid process (L)elbow with fixed flexion deformity, stiffness of the (L)elbow and partial ulnar nerve palsy = 12%

14. Ext.A8 disability certificate shows that the petitioner suffered

12% permanent physical disability. It was issued by the Asst. Professor of Orthopaedics in Govt. Medical College, Thrissur. The Tribunal, however, scaled down the percentage of disability of the petitioner to 5%,

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 12%.

MACA NO. 911 OF 2014 7 2025:KER:12212

15. On the date of accident, the petitioner was aged 18 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.1,81,440/-.

16. Since the notional income of the petitioner is re-fixed at Rs.5000/-, towards loss of earning he is entitled to get a sum of Rs. 15000/- (5000x3 months)

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

awarded Rs.18000/-. Towards 'loss of amenities of life' Rs. 13000/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side. At the same time, towards 'extra nourishment', and damage to cloth compensation was not awarded.

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

treated as inpatient for 5 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 not awarded by the tribunal and hence they are enhanced to Rs.25000/-, and

MACA NO. 911 OF 2014 8 2025:KER:12212 15000/- respectively. Towards 'extra nourishment' and damage to clothing. Rs.3000/-and 1000/- respectively are allowed.

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.2,65,007/-, as modified and recalculated above and given in the table below, for easy reference.

Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
1	Loss of earning(total)	9000	15000
2	Medical expenses	20567	20567
3	Bystander Expenses	1000	1000
4	Transportation Expenses	3000	3000
5	Extra nourishment	----	3000
6	Damage to clothing	----	1000
7	Pain and suffering	18,000	25000
8	Disability	32400	1,81,440
9	Loss of amenities	13000	15000
Total		Rs.96,967/-	(Rounded Rs.2,65,007 to Rs.97,000) Enhanced Rs.1,68,007

21. In the result, this Appeal is allowed in part, and Respondent No. 3 is directed to deposit a total sum of Rs.2,65,007/-/- (Rupees Two lakhs MACA NO. 911 OF 2014 9 2025:KER:12212

sixty five thousand seven rupees 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 216 days, the period of delay in filing the appeal, 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. Sd/- C. PRATHEEP KUMAR, JUDGE vnk/-

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