

Krishnan Kutty vs the Divisional Manager

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Court : Kerala

Decided On : Feb-17-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/2762/2017

Appellant : Krishnan Kutty

Respondent : The Divisional Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
MONDAY, THE 17TH DAY OF FEBRUARY 2025 / 28TH MAGHA, 1946
MACA NO. 2762 OF 2017 AGAINST THE AWARD DATED 04.06.2015
IN OPMV NO.1303 OF 2013 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL,KOLLAM APPELLANT/PETITIONER: KRISHNAN KUTTY
AGED 58 YEARS, S/O.RAGHAVAN PILLAI, KARTHIKA, PANAPPETTY,
SASTHAMCOTTA. BY ADV SRI.PRATHEESH.P RESPONDENT/2ND
RESPONDENT: THE DIVISIONAL MANAGER M/S.NATIONAL
INSURANCE CO.LTD., KOLLAM, PIN - 691 506. REPRESENTING
KOTTARAKKARA BRANCH. BY ADV SRI.P.JACOB MATHEW,
STANDING COUNSEL THIS MOTOR ACCIDENT CLAIMS APPEAL

HAVING BEEN FINALLY HEARD ON 17.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 17th day of February, 2025 The petitioner in O.P.(M.V.) No.1303/2013 on the file of the Motor Accident Claims Tribunal, Kollam 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 16.12.2011. According to the petitioner, on 16.12.2011 at about 3.15 p.m., while he was riding a motor cycle, he was hit down by a car bearing registration No.KL-24B-1616 owned and driven by the 1st respondent in a rash and negligent manner and as a result of which he fell down and 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.3,64,000/- and 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 documentary evidence Exts.A1 to A9. 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.25000/- 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. Pratheesh P., the learned Counsel appearing for the petitioner/appellant, and Sri. P. Jacob Mathew, the learned Standing Counsel for the 2nd respondent.
10. The Point: In this case the accident as well as valid insurance 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 salesman in a Kerosene store, earning Rs.10,000/- per month, but the Tribunal fixed his monthly income at Rs.5000/-. 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 2011 will come to Rs.8,000/-. 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.8,000/-.
12. In the accident the petitioner sustained the following injuries:
- Abrasion skin over scalp parietal and temporal region. Abrasion skin below knee
Abrasion skin left forehead abrasion skin below foot/injury right pinna Fracture C2 vertebrae without any neurological defect. Fracture base of 1st meta carpal left
13. The petitioner was treated as inpatient for a period of 5 days.

In this case the petitioner has not produced any disability certificate and as such the petitioner is not entitled to get any compensation on the head 'loss of disability'.

14. Towards loss of earning, the tribunal has awarded only

Rs.5,000/- being the income for a month @Rs.5,000/-. According to the learned counsel for the petitioner, the compensation awarded on the head 'loss of earning' is on the lower side. Since in the accident, the petitioner sustained fracture of C2 vertebrae and base of 1 st meta carpal, the petitioner might have lost income at least for a period of six months.

Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.48,000/- (8000x6months).

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

awarded Rs.15,000/-. 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. Towards 'loss of amenities of life' no compensation was awarded.

16. 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 'extra nourishment' are on the lower side and hence they are enhanced to Rs.40,000/-, and Rs.3,000/- respectively. For the very same reasons, the petitioner is entitled for a sum of Rs.25,000/- on the head 'loss of amenities of life'.

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

18. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.1,20,500/-, as modified and recalculated above and given in the table below,

for easy reference: Sl. No. Head of Claim Amount awarded Amount Awarded

by Tribunal (in Rs.) in Appeal (in Rs.) 1 Loss of earning 5,000/- 48,000/-
2 Transport to hospital 2,000/- 2,000/- 3 Bystander expenses 1,000/-
1,000/- 4 Extra nourishment 500/- 3,000/- 5 Damage to clothing & articles
500/- 500/- 6 Medical expenses 1,000/- 1,000/- 7 Pain and suffering
15,000/- 40,000/- 8 Loss of amenities Nil 25,000/- Total 25,000/-
1,20,500/- Enhanced Rs.95,500/-

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

No.2 is directed to deposit a total sum of Rs.1,20,500/- (Rupees one lakh twenty thousand five hundred only), less the amount already deposited, if any, along with interest at the rate ordered by the Tribunal, from the date of the petition till deposit/realisation, excluding interest for a period of 713 days, the period of delay in filing the appeal, with proportionate costs, within a period of two months from today. (Enhanced compensation will carry interest @8%).

20. 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 sou.

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