

Sivadas vs Arun Krishnan

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Court : Kerala

Decided On : Feb-25-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/2012/2014

Appellant : Sivadas

Respondent : Arun Krishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
TUESDAY, THE 25TH DAY OF FEBRUARY 2025 / 6TH PHALGUNA, 1946
MACA NO. 2012 OF 2014 AGAINST THE AWARD DATED IN OPMV NO.134 OF
2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOTTAYAM APPELLANT:
SIVADAS KAVUMPURATH HOUSE, AYMANAM POST,KOTTAYAM BY ADVS.
SRI.MATHEW JOHN (K) SRI.DOMSON J.VATTAKUZHY RESPONDENTS: 1
ARUN KRISHNAN VETTIKANAL HOUSE,KARUVAMKUZHI KARA,
KOOVAPPALLY VILLAGE,KOTTAYAM 686 518 2 SANJEEV MATHEW
KALAPPURACKAL HOUSE,POOVARANI POST, PAIKA PALA 686 577 3 THE
UNITED INDIA INSURANCE CO.LTD KOTTAYAM 686 001 BY ADVS. SRI.P.K
MANOJ KUMAR -SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING

COME UP FOR ADMISSION ON 25.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 2012 OF 2014 2

JUDGMENT

Dated this the 25th day of February, 2025 The petitioner in O.P.(M.V.) No. 134/2011 on the file of the Motor Accident Claims Tribunal, Kottayam, 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 05.08.2010. According to the petitioner, on 05.08.2010 at about 11.30 a.m., while he was riding a motorcycle, a bus bearing Reg.No. KL 35/A-4383 driven by the 1st respondent in rash and negligent manner hit against the motorcycle. As a result of the accident, the petitioner sustained serious injuries.

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

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.18,21,000 (limited to 15,00,000)

4. The insurance company filed a written statement, admitting the MACA NO. 2012 OF 2014 3 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 A12 and X1 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.2,94,700/- (rounded to Rs.2,95,000/-) 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. Mathew John, the learned Counsel appearing for the petitioner/appellant, and Sri.P.K Manoj Kumar, 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 contentions raised by the learned counsel for the petitioner is regarding the income of the petitioner MACA NO. 2012 OF 2014 4

as fixed by the Tribunal. According to him, the petitioner was working as Poojari, 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 2010 will come to Rs.7500/-. 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.7500/-.

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

He sustained type I Thompson epstein fracture dislocation of right hip, type II open tibial condyle fracture right, fracture right shatzker type VI, fracture clavicle of scapula right and fracture P1 of right little finger.

13. As per Exhibit X1 disability certificate the petitioner suffered

24% 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 24%, as MACA NO. 2012 OF 2014 5 fixed by the Tribunal.

14. On the date of accident, the petitioner was aged 46 years.

Therefore, 25% 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 13, 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.3,51,000/-

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

Rs.20,000/- being the income for 4 months @Rs.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 6 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.45,000/- (7500 x 6 months).

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

awarded Rs.25,000/-. Towards 'loss of amenities of life' Rs. 30,000/- was awarded, towards 'extra nourishment' Rs.2,000/- and towards bystander expenses Rs. 9,000/- 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 MACA NO. 2012 OF 2014 6

and was treated as inpatient for 67 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', 'extra nourishment' and bystander expenses are on the lower side and hence they are enhanced to Rs. 75,000/-, 50,000/-, 10,000/- and 15,000/- 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 petitioners/appellants are entitled to get a total

compensation of Rs.5,67,500/-, 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.)	Appeal (in Rs.)
1	Loss of earning	Rs.20,000/-	Rs.45,000/-
2	Transport to hospital	Rs.2,000/-	Rs.2,000/-
3	Extra nourishment	Rs.2,000/-	Rs.10,000/-
4	Damage to clothings	Rs.500/-	Rs.500/-
5	Bystander expenses	Rs.9,000/-	Rs.15,000/-
6	Medical expenses	Rs.19,000/-	Rs.19,000/-
7	Pain and suffering	Rs.25,000/-	Rs.75,000/-
8	Loss of amenities and inconvenience in life and also for discomforts and disability	Rs.30,000/-	Rs.50,000/-

MACA NO. 2012 OF 2014 7 9 Loss of earning capacity Rs.1,87,200/- Rs.3,51,000/- Total Rs.2,94,700/-(rounded to Rs.5,67,500/- 2,95,000) Enhanced Rs.2,72,500/-

20. In the result, this Appeal is allowed in part, and 3rd respondent

is directed to deposit a total sum of Rs.5,67,500/- (Rupees Five lakhs sixty seven 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, with proportionate costs, within a period of two months from today. (Enhanced compensation will carry interest @8%)

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/-

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