

Anees Arif vs the Branch Manager

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Court : Kerala

Decided On : Mar-14-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/3229/2014

Appellant : Anees Arif

Respondent : The Branch Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
FRIDAY, THE 14TH DAY OF MARCH 2025/23RD PHALGUNA, 1946
MACA NO. 3229 OF 2014 AGAINST THE ORDER/JUDGMENT DATED
17.12.2023 IN OPMV NO.217 OF 2011 OF DISTRICT COURT &
SESSIONS & MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA.
APPELLANT: ANEES ARIF, AGED 22 YEARS, S/O.ABDUL AZEEZ,
POTTAYIL HOUSE, CHUNDALE POST, CHUNDALE VILLAGE,
VYTHIRI TALUK, WAYANAD DISTRICT. BY ADV SMT.CELINE
JOSEPH RESPONDENT: THE BRANCH MANAGER, UNITED INDIA
INSURANCE COMPANY LTD, BRANCH OFFICE, NOORNAL
BUILDING, MYSORE ROAD, SULTHAN BATHERY - 673 621. BY ADV

SRI.P.K.MANOJKUMAR,SC,UNITED INDIA INSU THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

JUDGMENT

Dated this the 14th day of March, 2025 The petitioner in O.P.(M.V.) No.217/2011 on the file of the Motor Accident Claims Tribunal, Wayanad, Kalpetta 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 23.11.2010. According to the petitioner, on 23.11.2010 at about 1.30 p.m., while the petitioner was riding a motorcycle, a jeep bearing Registration No.TN-28/V-9549 driven by the 1st respondent in a rash and negligent manner hit against the motorcycle and as a result of the accident, the petitioner fell down and 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.4,94,000/- 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 -3- on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the documentary evidence Exts.A1 to A13 and C1. 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.3,25,352/- 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.Celine Jospeh, 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 as fixed by the Tribunal. According to him, the petitioner was working as a driver, earning Rs.6,000/- per month, but the Tribunal fixed his monthly income at

-4- Rs.3,000/-.

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 2010 will come to Rs.7,500/-.Therefore, the learned counsel prayed for fixing the notional income of the petitioner at Rs.7,500/-. 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 2010) will come to Rs.7,500/-, 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.7,500/-.

12. In the accident the petitioner sustained Fracture left tibia. As per Ext.A7 discharge summery, the petitioner sustained type III C fracture both bones (left) leg.

13. As per Ext.C1 disability certificate issued by the

Medical Board, his permanent physical disability as per MC Bride Scale was assessed as 12% and as per NIOH scale was assessed as 24%. The tribunal has fixed his permanent physical disability at 12% and awarded a total compensation of Rs.3,25,352/-.

14. In the disability certificate, the Medical Board -5-

noted that the petitioner has ugly face scar with tissue loss left leg, partial anklyosis left ankle and 2 x shortening of left leg. At the time of the accident, the petitioner was 19 years old. Though, as per the MC Bride Scale, the permanent physical disability of the petitioner was assessed as 12%. The disability was assessed as per the National Institute of Orthopedically Handicapped scale, which represents the functional disability of the petitioner and, as such, I am inclined to accept the functional disability of the petitioner as 24%.

15. On the date of accident, the petitioner was aged 19

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..5,44,320/-.

16. Towards loss of earning, the tribunal has awarded

only Rs.18,000/- being the income for 6 months @Rs.3,000/-. 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 9 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.67,500/- (7,500 x 9 months).

17. Towards the head pain and sufferings, the -6-

Tribunal has awarded Rs.25,000/-. Towards 'loss of amenities of life' Rs.5,000/- was awarded, towards 'extra nourishment' Rs. 2,500/- was awarded and towards bystander expenses Rs.8,250/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

18. The petitioner was treated Baby Memorial

Hospital, Kozhikode and thereafter in the Medical College Hospital, Kozhikode for a total period of 50 days and thereafter, there were 5 reviews and, in the meantime, 3 surgeries were also conducted. Considering the nature of injuries sustained by the petitioner, 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/-, 7,500/- and 11,000/- respectively.

19. The tribunal, after examining the petitioner, noted

that there was a large scar on the left leg of the petitioner, and this was revealed by Ext. A10 photographs. However, towards the head of Mental agony (disfiguration), the tribunal awarded only Rs.5,000/-, which is on the lower side. Therefore, considering the findings, I hold that towards disfiguration a sum of Rs.50,000/- can be awarded.

20. No change is required, in the amounts awarded on -7- other heads, as the compensation awarded on those heads appears to be just and reasonable.

21. Therefore, the petitioner/appellant is entitled to get a total compensation of Rs.9,89,162/-, as modified and recalculated above and given in the table below, for easy reference: Sl.

No	Head of Claim	Amount awarded	Amount
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miscellaneous expenses 3 Bystanders expenses 8,250/- 11,000/- 4
Transportation 8,050/- 8,050/- expenses 5 Extra nourishment 2,500/-
7,500/- 6 Damage to clothing 1,000/- 1,000/- etc. 7 Pain and sufferings
25,000/- 75,000/- 8 Loss of amenities 5,000/- 50,000/- 9 Compensation
for 77,760/- 5,44,320/- permanent disability 10 Mental agony 5,000/-
50,000/- (disfiguration) Total 3,25,352/- 9,89,162/- Enhanced
Rs.6,63,810/-

22. In the result, this Appeal is allowed in part, and Respondent No.3 is directed to deposit a total sum of Rs.9,89,162/- (Rupees nine lakhs eighty nine thousand one hundred and sixty two -8-

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. 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

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