

Shanvy vs Girish

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Court : Kerala

Decided On : Mar-13-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/3357/2014

Appellant : Shanvy

Respondent : Girish

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
THURSDAY, THE 13TH DAY OF MARCH 2025/22ND PHALGUNA, 1946 MACA
NO. 3357 OF 2014 AGAINST THE ORDER/JUDGMENT DATED 20.10.2014 IN
OPMV NO.954 OF 2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
IRINJALAKUDA. APPELLANTS: 1 SHANVY, W/O. LATE KANAKAMBARAN,
PERINGOTTUKARAKARAN HOUSE, PORUNNAMKUNNU DESOM, ALOOR
VILLAGE, VELLANCHIRA.P.O., MUKUNDAPURAM TALUK, THRISSUR
DISTRICT. 2 BINIYA, D/O. LATE KANAKAMBARAN, PERINGOTTUKARAKARAN
HOUSE, PORUNNAMKUNNU DESOM, ALOOR VILLAGE, VELLANCHIRA.P.O.,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT. 3 BIBIN, S/O. LATE
KANAKAMBARAN, PERINGOTTUKARAKARAN HOUSE, PORUNNAMKUNNU

DESOM, ALOOR VILLAGE, VELLANCHIRA.P.O., MUKUNDAPURAM TALUK, THRISSUR DISTRICT. BY ADVS. SRI.P.V.BABY SRI.A.N.SANTHOSH -2-
RESPONDENTS: 1 GIRISH, S/O. VELAYUDHAN, KOTTARATHIL HOUSE, EDATHIRINJI.P.O., PIN-680 122. 2 THE NEW INDIA ASSURANCE CO. LTD, ROUND NORTH, THRISSUR-680 001. SRI.V.P.K.PANICKER THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

Dated this the 13th day of March, 2025 The petitioners in O.P.(M.V.) No.954/2009 on the file of the Motor Accident Claims Tribunal, Irinjalakuda is the appellant herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The O.P. was filed under under Section 166 of the Motor Vehicles Act, 1988, by the wife and children of the deceased by name Kanakambaran, who died in a motor vehicle accident that

occurred on 11.05.2009. According to them, on 11.05.2009, at about 5.30 p.m., while the deceased was riding a motorcycle, another motorcycle bearing reg. number KL-8/AJ-2987 ridden by Respondent No.2 in a rash and negligent manner, hit on his motorcycle and as a result of which he fell down and sustained serious injuries and later on he succumbed to the injuries, on 23.06.2009.

3. The 2nd respondent is the driver and 3 rd

respondent is the insurer of the offending vehicle. According to the petitioners, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. was Rs.42,50,000/- limited to Rs.35,00,000/-.

4. The insurance company filed a written statement, -4- 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 testimonies of PW1 and PW2 and documentary evidence Exts.A1 to A11. 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.18,54,030/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners 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.P.V.Baby, the learned Counsel appearing for the petitioners/appellants, and Sri.V.P.K.Panicker, the learned Counsel for the respondents.

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 petitioners is regarding the income of the deceased as fixed by the Tribunal. According to him, the deceased was working as Supervisor - 5- (Gangman Section) in Indian Railway, earning Rs.20,000/- per month, but the Tribunal fixed his monthly income at Rs.10,820/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. Relying upon Ext.A11 document and the oral

testimony of PW2, the learned counsel would argue that the salary of the deceased during June 2009 will come to Rs.15,330/-. From Exts.A11, it is revealed that his salary from 24.06.2009 to 30.06.2009, that is for a period of 7 days, was Rs.3,577/-.

12. The learned counsel for the 3rd respondent would argue that the monthly salary is not clear from Ext.A11. It is true that, in Ext.A11, only the 7 days salary starting from 24.06.2019 to 30.06.2019 is given. However, the said document contains the salary particulars of the deceased for the period from 01.07.2009 to 28.02.2019, till the date of retirement of the deceased. It also contains the signature of the Divisional Personal Officer, Southern Railway, Thiruvananthapuram as well as his official seal. In addition to the same, the Divisional Railway Manager Office Southern Railway, Chief Staff Welfare Inspector attached to the Divisional

Railway of the Southern Railway as PW2 deposed that Ext.A11 contained the salary particulars of the deceased . Therefore, I do not find any grounds to disbelieve Ext.A11.

13. As per Ext.A11, 7 days salary of the deceased -6-

during the month June 2009 will come to Rs.3,577/-. If so, his salary for one day will come to Rs.511/-(3577 / 7). Therefore, his monthly salary during June 2009 will come to Rs.15,330/- (3,577 / 7 x 30). In the above circumstances, the tribunal was not justified in limiting his monthly salary to Rs.10,870/-.

14. On the date of accident, the deceased was aged

50 years. Therefore, 15% of the monthly income is liable 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. Since the deceased was married who left behind 3 dependents, towards personal and living expense, 1/3 of the income is liable to be deducted, as held in Sarla Verma (supra). In the above circumstances, the loss of dependency will come to Rs.18,33,468/-.

15. The Tribunal has awarded Rs.25,000/- towards

loss of estate, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of consortium. In the light of the decision in Pranay Sethi (supra), the appellants are entitled to get a consolidated sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, and the dependents (parents,

children and spouse) are entitled to get a sum of Rs.40,000/- each towards loss of consortium, with an increase of 10% in every three years.

-7- Therefore, towards loss of estate and funeral expense they are entitled to get a sum of Rs.18,150/- each. Towards loss of consortium, petitioners together are entitled to get a sum of Rs.1,45,200/- (48,400 x 3).

16. Towards the head pain and sufferings, the Tribunal has awarded Rs.25,000/-, which according to the learned counsel for the petitioners, is on the lower side. The deceased died

in this case on 43 days after the accident. In the above circumstances, I hold that the compensation awarded towards pain and suffering is on the lower side, and hence, it is enhanced to Rs.50,000/-

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.22,80,718/-, as modified and recalculated above and given in the table below, for easy reference: Sl.

Head of Claim	Amount awarded	Amount Awarded No by Tribunal (in in Appeal (in Rs.) . Rs.)
1 Transport to hospital	2,000/-	2,000/-
2 Damage to clothing	500/-	500/-
3 Extra nourishment	500/-	500/-
4 Medical expenses	2,06,300/-	2,06,300/-
-8- 5 Bystanders expenses	6,450/-	6,450/-
6 Funeral expenses	25,000/-	18,150/-
7 Pain and suffering	25,000/-	50,000/-
8 Loss of dependency	14,63,280/-	18,33,468/-
9 Loss of consortium	1,00,000/-	1,45,200/-
10 Loss of estate	25,000/-	18,150/-
Total	18,54,030/-	22,80,718/-
Enhanced		Rs.4,26,688/-

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

the 3rd respondent is directed to deposit a total sum of Rs.22,80,718/- (Rupees twenty two lakhs eighty thousand seven hundred and eighteen Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till realisation/deposit, 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 petitioners, in the ratio fixed by the Tribunal, excluding court fee payable, if any, without delay, as per rules. Sd/- C. PRATHEEP KUMAR, JUDGE ADS

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