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James Joseph vs Divin David

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Court : Kerala

Decided On : Mar-04-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/4227/2017

Appellant : James Joseph

Respondent : Divin David

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR TUESDAY, THE 4TH DAY OF MARCH 2025 / 13TH PHALGUNA, 1946 MACA NO. 4227 OF 2017 AGAINST THE ORDER/JUDGMENT DATED 15.09.2017 IN OPMV NO.770 OF 2013 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,PERUMBAVOOR APPELLANT/PETITIONER: JAMES JOSEPH AGED 60 YEARS, MANICKATH HOUSE, THANNIPUZHA, OKKAL P.O. BY ADVS. SRI.TONY THOMAS (INCHIPARAMBIL) SRI.P.THOMAS GEEVERGHESE RESPONDENTS/RESPONDENTS:

1 DIVIN DAVID THOTTAPPILLY HOUSE, OKKAL - 683 550, ERNAKULAM DIST., (OWNER OF THE CAR NO. KL-40/E-6817) 2 K.P.

JAMES KURIYATHU HOUSE, EAST OKKAL ROAD P.O.- 683 550, ERNAKULAM DIST. (DRIVER OF THE CAR NO. KL-40/E- 6817) 3 THE NEW INDIA ASSURANCE COMPANY LTD. REGIONAL OFFICE, ERNAKULAM - 682 011, (INSURER OF THE CAR NO. KL-40/E-6817) BY ADV SRI.A.C.DEVY THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 04.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner in O.P.(M.V.) No.770/2013 on the file of the Motor Accident Claims Tribunal, Perumbavoor, 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 23.11.2012. According to the petitioner, on 23.11.2012 at about 7.15 p.m., while he was standing by the side of Kalady-Perumbavoor road, a car bearing reg.no.KL 40/E-6817 driven by the 2nd respondent in a rash and negligent manner, knocked him down and as a result of the accident, the petitioner sustained serious injuries.

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

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.14,11,000/- limited to Rs.12,00,000/-.

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 the oral testimony of PW1 and documentary evidence Exts.A1 to A11, 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.4,60,489/- 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. Tony Thomas Inchiparambil, the learned Counsel appearing for the petitioner/appellant, and Smt. A.C. Devy, 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 Manager (Administration) of Federal Bank Limited, earning Rs.72591/- 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. One of the arguments advanced by the learned counsel

for the petitioner is regarding the notional income of the petitioner fixed by the Tribunal at Rs.5000/-. From Ext.A9 salary certificate of the petitioner, it is revealed that his salary during November 2012 was Rs.72591.89. However the Tribunal has fixed his notional income at Rs.5000/- for the purpose of assessing the loss of disability. The law is well settled that for the purpose of assessing the loss of disability in respect of a permanent employees getting monthly salary, average 50% of the income is to be taken as notional income for the purpose of assessing loss of disability. It was argued by the learned counsel for the 3rd respondent that though the accident was on 23.11.2012, the petitioner retired on 31.1.2013 and

therefore according to him, there is no loss of actual salary and the notional income fixed by the Tribunal is correct.

12. In the decision in Dinesh Singh vs. Bajaj Allianz General

Insurance Company Ltd. 2014(9) SCC 241, the Honble Supreme Court has fixed the notional income of an Engineer suffering from 60% disability drawing a monthly income of Rs.17200/- at Rs.12840/-. In the decision in Akhilesh Chandran vs. Sabu Varghese and Others [MANU/KE/3976/2024], a Single Bench of this Court has fixed the notional income of a victim employed in co-operative bank suffering from 40% disability and drawing a monthly income of Rs.27954/- as Rs.15,000/-. In the

decision Deepa Cyrus vs. Divisional Manager, Oriental Insurance Company Ltd. [MANU/KE/4197/2024], in the case of a victim employed in Federal Bank, suffering from 80% disability having a monthly salary of Rs.50047/-, the notional income was fixed as Rs.25,000/-. In the above circumstances, it can be seen that in the case of a permanent employee the notional income is to be taken as approximately 50% of the salary drawn by him on the date of the accident.

13. In the instant case, since the monthly salary of the petitioner

was Rs.72591.89 it is rounded to Rs.72592. Therefore, his annual income during 2012-2013 will come to Rs.8,71,104 (72592x12). During the year 2012-2013, there was no income tax payable for the first 1,80,000/-. For the remaining income upto Rs.5 lakhs, the income tax payable was 10%. For the income exceeding Rs.5 lakhs upto Rs.8 lakhs, it was 20%. Therefore, the income tax payable by the petitioner during 2012-2013 was Rs.1,06,220/-. Therefore his annual income less the income tax payable will come to Rs.7,64,884/- (871104-1,06,220). Therefore, his monthly income less the income tax payable will come to Rs.63,740/- (7,64,884/12). Therefore, 50% of the monthly income less the income tax payable will come to Rs.31,870/-.

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

Contusion with haematoma on the left side of forehead. Lacerated wound on the left side of face-lower chest. Abrasion on the right parietal region. Bleeding from the right ear.

15. As per Exhibit C1 disability certificate the petitioner suffered

40% 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 40%, as fixed by the Tribunal.

16. On the date of accident, the petitioner was aged 59 years.

Therefore, 15% 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 9, 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.15,83,302/-.

17. Towards loss of earning for availing previlege leave for 58

days, the tribunal has awarded Rs.125527/-, taking the monthly salary as Rs.64928/-. Since the monthly salary of the petitioner was Rs.72592/-, the loss of income for 58 days will come to Rs.140345/-. Therefore, towards loss of earning the petitioner is entitled to get a sum of Rs.140345/-.

18. The learned counsel for the petitioner relying upon Ext.A10

certificate issued from the Federal Bank would argue that because of the injuries sustained in the accident he had lost the facility to avail Leave Fare Concession to foreign travel and thereby he had lost a sum of Rs.2,41,144. From Ext.A10 it is revealed that the bank has sanctioned Leave Fare Concession for foreign travel to the petitioner and the journey was proposed to be commenced from 10.12.2012 and an amount of Rs.2,31,048/- was sanctioned to him being the advance amount

for Leave Fare Concession. Since he met with the accident before the commencement of the journey, he could not proceed with the journey. Therefore, he had repaid a sum of Rs.2,41,144/- including the amount advanced with interest. Therefore, from Ext.A10 it is revealed that because of the injuries sustained in the accident, the petitioner sustained a loss of Rs.2,41,144/- and as such he is entitled to get back that amount towards loss of leave fare concession.

19. The learned counsel for the 3rd respondent would argue that the

total claim is only Rs.12,00,000/- and as such the compensation cannot be awarded more than what is claimed. However, the law is well settled that the Tribunal has the duty to award just and reasonable compensation to victims of motor vehicle accidents and there is nothing wrong in awarding compensation over and above what is claimed.

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

awarded Rs.25000/-. Towards 'loss of amenities of life' Rs.20000/- was awarded, towards 'extra nourishment' Rs.1500/- was awarded and towards attendance charge Rs.2750/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

21. The petitioner sustained very serious injuries in the accident

and was treated as inpatient for 21 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 attendance charge are on the lower side and hence they are enhanced to Rs.1,00,000, Rs.75000/- , Rs.10000/- and Rs.5250/- (250x21) respectively.

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

23. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.22,24,753/-, as modified and recalculated above and given in the table below,

for easy reference: Sl.

No.	Head of Claim	Amount awarded by	Amoun

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

No.3 is directed to deposit a total sum of Rs.22,24,753/- (Rupees Twenty Two Lakhs Twenty Four Thousand Seven Hundred and Fifty Three 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 Pvv

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