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Mohammed vs Sanju Thomas,

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr. Justice Easwaran S.

Appeal No. : MACA/549/2021

Appellant : Mohammed

Respondent : Sanju Thomas,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE EASWARAN S. FRIDAY, THE 28TH DAY OF MARCH 2025/7TH CHAITHRA, 1947 MACA NO. 549 OF 2021 AGAINST THE ORDER/JUDGMENT DATED 23.07.2019 IN OPMV NO.1406 OF 2017 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI. APPELLANT: MOHAMMED, AGED 62 YEARS, S/O. MAMMUTTY, PARAYATTA HOUSE, KIZHAKKETHALA, N.S.S.COLLEGE-PO, MANJERI, ERNAD TALUK, MALAPPURAM DISTRICT, PIN - 676 121. BY ADV SMT.T.J.MARIA GORETTI RESPONDENTS:

1 SANJU THOMAS, S/O. GEORGE THOMAS, BATHEL BHAVAN, POOKOLATHUR, PULPATTA PO, MANJERI (VIA), MALAPPURAM

DISTRICT, PIN - 676 123. 2 UNITED INDIA INSURANCE COMPANY LIMITED, DIVISIONAL OFFICE, ARAFA BUILDING, COURT ROAD, MANJERI PO, MALAPPURAM DISTRICT, PIN - 676 121, REPRESENTED BY ITS MANAGER. BY ADV SRI.P.K.MANOJKUMAR,SC,UNITED INDIA INSU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

JUDGMENT

(Dated this the 28th day of March, 2025) The appeal is preferred by the claimant aggrieved by the award in O.P.(MV) No.1406 of 2017 on the files of Motor Accidents Claims Tribunal, Manjeri.

2. The brief facts for disposal of the appeal are as follows: On 10.06.2017 at about 8.20 a.m., while the petitioner was riding a

motorcycle bearing Registration No.KL-10/AM-5961 and when he reached at Manjeri, a car bearing Registration No.KL-11/U-8391 driven by the 1st respondent came in a rash and negligent manner and hit against the claimant. Immediately after the accident, the claimant was admitted to the hospital where he was treated as inpatient. The claimant contended that he was working as a loading an unloading worker with an income of Rs.27,000/- per month and thus, claim a total compensation of Rs.30,00,000/-.

3. In support of his contention, the claimant produced Exts.A1 to A12 documents. Ext.X1 is the disability certificate

produced on behalf of the claimant. PW1 and PW2 were also examined on the side of the claimant. The Insurance Company did not adduce any evidence, oral or documentary evidence in support of that claim. The tribunal on appreciation of evidence found that the -3- claimant is 90% disabled due to the injures sustained by him in the accident and therefore proceeded to grant 100% functional disability and fixed the notional income as Rs.27,000/- and granted the following

compensations:

Sl	Head of Claim	Amount	Amount	Re
	earnings 2 Transport expenses	1,00,000/-	35,000/-	
	3 Extra nourishment	50,000/-	75,000/-	
	4 Damage to clothing and articles	2,000/-	1,000/-	
	5 Bystander expenses	30,000/-	5,00,000/-	
	6 Medical expenses	5,00,000/-	4,15,480/- Ext.A10 series	
	7 Future treatment	3,00,000/-	Nil	
	8 Compensation for loss of amenities	1,00,000/-	Nil	
	9 Compensation for disfigurement	1,00,000/-	Nil	
	10 Compensation for pain and sufferings	2,00,000/-	1,00,000/-	
	11 Compensation for permanent disability and loss of earning power	3,00,000/- + 3,16,600x9	28,49,400/- + 12,00,000/-	

Total Rs.31,22,000/- (Claim limited to Rs.39,75,880/- (Rounded Rs.30,00,000/-) to Rs.39,76,000/-) -4- Aggrieved by the insufficiency of the grant of compensation, the appellant has approached this Court.

4. Heard Sri. P.Venugopal, the learned counsel appearing for the appellant and Sri.P.K.Manoj Kumar, the learned Standing Counsel appearing for the Insurance Company.

5. On a consideration of the rival submissions raised across

the Bar, it becomes imperative for the Court to modify the award passed by the Motor Accidents Claims Tribunal, Manjeri. The tribunal on assessment of the disability suffered by the appellant found that he is entitled for a functional disability of 100%. It is true that the appellant was successful in proving that he was earning a monthly income of Rs.27,000/-. But the question of this Court is once the tribunal has fixed the functional disability at 100%, certainty the appellant is entitled for the benefits going out of such fixation of having a disability.

6. In Kajal v. Jagdish Chand and Others [(2020) 4 SCC 413], the Honble Supreme Court, while considering a case of 100% disabled child found that the future attendant charges has to be calculated on the basis of the multiplier system. Applying the principles laid down by the Honble Supreme Court as above, this

Court finds that the tribunal was not justified in granting the -5-

bystander expenses on a lumpsum amount. Therefore, the non- granting of attendant charges by applying the multiplier system is certainly an infirmity which requires interference by this Court.

7. Still further, when the structure of compensation granted

by the tribunal is perused, it is evident that the tribunal has not granted any compensation under the head of loss of amenities and also the compensation granted under the head of pain and sufferings is also unreasonable.

8. On a cumulative consideration of the entire pleadings

and also evidence on record and also applying the principles laid down by the Honble Supreme Court, it becomes imperative for this Court to modify the award passed by the Motor Accidents Claims Tribunal.

Hence the appeal is allowed and the award passed by the Motor Accidents Claims Tribunal, Manjeri is modified as follows: a) Since the tribunal has already awarded Rs.5,00,000/- as bystander expenses, modification under the head is then as follows: 650 x 243 - 1,57,950 - 5,00,000 = 3,42,050/- . b) The amount of Rs.15,29,050/- (17,325 x 12 x 9 = 18,71,100 - 3,42,050) is awarded under the head attendant charges. c) The amount of Rs.1,00,000/- towards additional -6- compensation is awarded under the head loss of amenities. d) The appellant is entitled to have a compensation of Rs.1,00,000/- under the head of pain and suffering. Thus, the appellant is entitled for a total additional

compensation of Rs.17,29,050/- (Rupees seventeen lakhs twenty nine thousand and fifty only). He is entitled for an interest at 9% per annum from 27.12.2017 till date of realization with

proportionate costs. While calculating interest, the claimant/appellant shall not be entitled interest for a period of 46 days which is the delay caused in preferring the above appeal. The Insurance Company shall deposit the enhanced compensation together with interest and proportionate costs within a period of one month from

the date of receipt of a copy of this judgment. The claimant shall furnish the details of the bank account to the

Insurance Company for transfer of the amount. The appeal is ordered accordingly. Sd/- EASWARAN S. JUDGE ADS

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