

Biji vs the Branch Manager,

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : MACA/1019/2021

Appellant : BIJI

Respondent : The Branch Manager,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946
MACA NO. 1019 OF 2021 AGAINST THE AWARD DATED 12.11.2020
IN OPMV NO.265 OF 2018 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, MUVATTUPUZHA APPELLANT/PETITIONER: BIJI
W/O.SHAJI, KILIKKATTUTHOTTATHIL HOUSE, VELLARAMKALLU
KARA, KALLOORKKADU VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT, PIN-686670. BY ADV ANEY PAUL
RESPONDENT/3RD RESPONDENT: THE BRANCH MANAGER,
NATIONAL INSURANCE CO. LTD., REPRESENTED BY MARUTI
INSURANCE BROKING PRIVATE LTD., NELSON MANDELA ROAD,

VASANT KUNJ, NEW DELHI, PIN-110070. BY ADV E.M.JOSEPH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA No.1019 of 2021 2

JUDGMENT

This appeal is at the instance of the claimant in OP(MV) No.265 of 2018 on the file of Motor Accidents Claims Tribunal, Muvattupuzha, impugning the award on the ground of inadequacy of compensation.

2. On 26.12.2017, as the appellant/claimant fell down from a

bike, she was taken to Nirmala Medical Centre, Muvattupuzha and from there she was referred to a higher centre for better treatment. While she was taken in an ambulance driven by the 6th respondent, KL 17 R18 car driven by the 2nd respondent, in a rash and negligent manner, dashed against the ambulance, and the appellant suffered serious head injury thereby. She was admitted and treated in hospital for 46 days. She was a 39 year old coolie cum tailor, earning monthly income of Rs.15,000/-. Though she approached the Tribunal claiming

compensation of Rs.18 lakh, learned Tribunal awarded only Rs.7,47,892/- and hence this appeal.

3. The 2nd respondent was the driver of the offending car, 1st

respondent was its owner and the 3rd respondent was its insurer. Respondents 4 to 7 were the owner, driver, insurer etc. of the ambulance in which the appellant was travelling. MACA No.1019 of 2021 3

4. Learned Tribunal, on analysing the facts and evidence, found

that the accident occurred due to the rash and negligent driving of the car by the 2nd respondent and so, the 3rd respondent, insurance company was directed to compensate the claimant.

5. In the appeal, the insurer of the car alone is the respondent. According to them, the compensation awarded by the Tribunal is just and reasonable, and hence it needs no modification.

6. Now this Court is called upon to answer whether there is any illegality, irregularity or impropriety in the impugned Award warranting interference by this Court.

7. Heard learned counsel for the appellant and learned counsel for the respondent/insurer.

8. Along with the appeal, the appellant filed a petition for

referring her to a Medical Board, to assess her present disability. The Superintendent of Government Medical College Hospital, Kottayam was directed to constitute a Medical Board to assess her disability, and accordingly, a disability certificate was issued on 28.02.2024, assessing her permanent disability as 21% which includes 2% of orthopedic disability and 19% of neuro disability, resulting in facial MACA No.1019 of 2021 4 palsy.

9. Learned counsel for the appellant would submit that, the appellant was a 39 year old coolie cum tailor earning monthly income

of Rs.15,000/-.

But, learned Tribunal fixed her notional

Insurance Company Limited (AIR 2011 SC 2951) to say that, as the accident was in the year 2017, she was eligible to get her notional income fixed @ Rs.11,000/- per month. Accepting that argument, this Court is inclined to fix her notional income @ Rs.11,000/- per month.

10. Learned Tribunal assessed loss of earning for six months.

She had suffered head injury and clavicle fracture with hospitalisation of 46 days. Considering that aspect, this Court is inclined to take her loss of earning for a period of eight months @ Rs.11,000/-, which will come to Rs.88,000/-. After deducting Rs.54,000/- already awarded by the Tribunal, she is entitled to get the balance amount of Rs.34,000/-.

11. Towards pain and suffering, learned Tribunal awarded Rs.60,000/- against her claim of Rs.1,50,000/-. Considering the nature of injuries and the period of hospitalisation, this Court is MACA No.1019 of 2021 5 inclined to award Rs.20,000/- more towards pain and suffering.

12. The disability certificate issued by the Medical Board of Government Medical College Hospital, Kottayam shows her disability as

21%. Learned counsel for the respondent opposed that certificate, stating that, the disability noted as 21% cannot be fully attributed to the injuries she had suffered in this accident, as there was evidence to show that, on falling down from the bike, she had sustained head injury and when she was taken to Nirmala Medical Centre, Muvattupuzha, she was referred to a higher centre for better

treatment. Ext.A8 wound certificate issued from Nirmala Medical Centre, Muvattupuzha will show that, the appellant had sustained head injury, and there was bleeding from mouth and ears. So there is force in the argument put forward by learned counsel for the respondent. It has to be found that the disability of 21% was the cumulative effect of the injuries she had suffered in both the accidents. Moreover, in the disability certificate issued by the Medical Board, it is not mentioned that the 21% disability noted was with respect to her whole body. Considering these aspects, this Court is inclined to accept her disability to the extent of 19% for the injuries she had suffered in this accident.

MACA No.1019 of 2021 6

The multiplier applicable is 15 as she was aged only 39.

awarded by the Tribunal, she is entitled to get the balance amount of Rs.2,14,200/-.

13. Towards loss of amenities, learned Tribunal awarded

Rs.75,000/- against her claim of Rs.1 lakh. The disability certificate shows that, she had suffered facial palsy and neurological disability to the extent of 19%. So, this Court is inclined to award Rs.5,000/- more under the head loss of amenities.

14. The compensation awarded by the Tribunal under all other heads seems to be reasonable and so, it need not be interfered with. Amount Amount Difference to be Head of claim awarded by the awarded in drawn as Tribunal appeal enhanced compensation

(1) (2) (3) (4)

Loss of earning

Rs.54,000/-

Rs.88,000/-

15. In the result, the appellant is entitled to get enhanced compensation of Rs.2,73,200/- (Rupees Two lakh seventy three thousand two hundred only). The respondent/insurer is directed to deposit the enhanced

compensation of Rs.2,73,200/- (Rupees Two lakh seventy three thousand two hundred only) with interest @ 7% per annum from the date of petition till the date of deposit before the Motor Accidents Claims Tribunal, Muvattupuzha, within a period of two months from the date of receipt of a copy of this judgment. Learned Tribunal shall disburse that amount to the appellant, after deducting the liabilities, if any, towards Tax, balance court fee and legal benefit fund. The appeal is allowed to the extent as above. No order as to costs. Sd/- SOPHY THOMAS JUDGE smp

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