

Kadeeja vs Narayani

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Court : Kerala

Decided On : Jun-28-2024

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : MACA/1302/2019

Appellant : Kadeeja

Respondent : Narayani

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN FRIDAY, THE 28TH DAY OF JUNE 2024 / 7TH ASHADHA, 1946 AGAINST THE AWARD DATED 12.09.2018 IN OPMV NO.912 OF 2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL VADAKARA APPELLANT/PETITIONER: KADEEJA AGED 51 YEARS W/O. KUNHABDULLA, RESIDING AT VALIYA PARAMBATH HOUSE, AROOR P.O, PERUMUNDACHERY, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN-673 507 BY ADVS. ABU MATHEW SRI.AJU MATHEW RESPONDENTS/RESPONDENTS:

1 NARAYANI AGED NOT KNOWN, W/O. KUNHIRAMAN, RESIDING AT MALOKANDIYIL HOUSE, VARIKKOLI P.O, KALLACHI, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN-673 506 2 GIREESAN M.K AGED NOT KNOWN, S/O. POCKEN, RESIDING AT MALOKKANADIYIL HOUSE, VARIKKOLI P.O, KALLACHI, VATAKARA TALUK, KOZHIKODE DISTRICT, PIN-673 506 3 THE ORIENTAL INSURANCE CO. LTD. SREENIDHI BUILDING, VATAKARA, KOZHIKODE DISTRICT, PIN-673 101, REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE. BY ADVS. SRI.R.AJITH KUMAR (128/84) LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 28th day of June, 2024 This appeal has been filed by the claimant in OP(MV) No.912 of 2015 on the file of the Motor Accidents Claims Tribunal, Vatakara. The respondents herein are the respondents before the Tribunal.

2. According to the appellant, on 28.05.2014, at about

2.45 p.m, while she was walking through the road at Perumundacheri, a tipper lorry bearing registration No.KL-18-G 9356 driven by the second respondent in a rash and negligent manner, hit the appellant and thereby sustained serious injuries. The appellant approached the Tribunal claiming a total compensation of 29,47,000/-, which is limited to 25,00,000/-.

3. The respondent-insurer filed a written statement,

admitting the insurance policy, but disputing the quantum of compensation claimed. Before the Tribunal, no documentary evidence was adduced by the respondent-insurer. Exts.A1 to A16 series and C1 documents were marked on the side of the appellant. The Tribunal, after analysing the pleadings and materials on record, awarded a sum of 11,47,700/- as compensation under different heads with

interest @ 9% per annum from the date of petition, till realization, against the respondent being the insurer. Dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant has come up in appeal.

4. Heard the learned counsel for the appellant and the learned Standing Counsel for the respondent insurer.

5. The learned counsel for the appellant claims enhancement mainly under the following heads:- I. Notional income Though the appellant claimed an amount of 10,000 per

month towards the notional income, the Tribunal had awarded only an amount of 6,000/-. Following the judgment in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236], the monthly income ought to have been taken at 9,500/-, since the accident occurred in the year 2014. Accordingly, I re-fix the notional income at 9,500/- (Rupees Nine Thousand Five Hundred Only) per month. II. Loss of earnings The learned Counsel for the appellant submits that the

Tribunal had considered only 9 months for the purpose of calculating compensation under the head loss of earnings, whereas, due to the injury sustained to the appellant, she could not go for any work nearly for one year. Considering the avocation of the appellant, I find that a 12 months period can be taken for calculating compensation under the said head. Accordingly, the said head has to be re-calculated considering 9,500/- as her notional income. Thus, the total compensation under the said head will be 1,14,000/- (9,500 x 12). Thus, an additional amount of 60,000/- (Rupees Sixty Thousand Only) is granted towards the head loss of earnings.

III. Pain and Suffering Though an amount of 2,00,000/- was claimed by the

appellant under the said head, the Tribunal had granted only an amount of 75,000/-. On a perusal of the award, it is seen that the appellant was brought to the Court with the help of crutches. On personal examination, it is seen that the appellant cannot walk, sit, squat or run freely. Considering the injuries sustained

by the appellant, I find that a total amount of 1,00,000/- would be just and reasonable under the head pain and sufferings. Thus there will be an additional amount of 25,000/- (Rupees Twenty Five Thousand Only) under the said head.

IV. Permanent disability Though the appellant claimed an amount of 5,00,000/-

under the said head, the Tribunal had granted only 1,26,360/-, taking into consideration the notional income at 6,000/- for nine months. Since, the notional income is enhanced and fixed at 9,500/-, the compensation granted under the afore head has to be recalculated, totalling to an amount of 2,00,070/- (9,500 x 12 x 13 x 13.5/100). Thus there will be an additional amount of 73,710/- (Rupees Seventy Three Thousand Seven Hundred and Ten Only) under that head.

6. Though the appellant claimed enhancement of

compensation under other heads, on a perusal of the records available, I am not inclined to interfere with the compensation awarded by the Tribunal under other heads since it appears to be just and reasonable. Thus, the impugned award of the Tribunal is modified as follows: Amount Amount

Sl.	Amount	awarded
(in Rs.)	(in Rs.)	Notional income
1,20,000	54,000	6,000
2	35,000	10,000
40,000	58,000	58,000
7,48,306	7,48,306	7,48,306
5	2,000	1,000
life	7	Permanent
3,00,000	-	5,00,000
11,47,666	1,58,710	13,06,376

1 Loss of earnings from 28.05.2014 to 28.05.2015 Transport to (not hospital modified) Extra Nourishment & bystanders (not expenses modified) (not Medical expenses modified) Damage to clothing (not

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disability Loss of earning agony Total 29,47,000 (claim limited to) 25,00,000 Accordingly, the appeal is allowed in part and the

appellant/claimant is awarded an additional compensation of 1,58,710/- (Rupees One Lakh Fifty Eight Thousand Seven Hundred and Ten Only) over and above the

compensation awarded by the Tribunal with interest @ 9% per annum from the date of petition till realization and proportionate costs. The respondent insurer shall deposit the said amount together with interest and costs within a period of two months from the date of receipt of a certified copy of this judgment. The claimant shall furnish copies of the PAN Card, AADHAAR Card and bank details before the respondent insurer within a period of one month so as to enable the insurance company to make the deposit as ordered above. In case of failure to furnish details as above, it shall be open for the insurance company to deposit the said amount before the Tribunal. Upon such deposit being made, the entire amount shall be disbursed to the appellant at the earliest in accordance with law. However, it is made clear that the enhanced compensation will not carry interest for the period of delay of 53 days in filing the appeal.

Sd/- SHOBA ANNAMMA EAPEN JUDGE RK

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