

Raveendran vs Abu-Thahir

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : MACA/177/2018

Appellant : Raveendran

Respondent : Abu-Thahir

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN WEDNESDAY, THE 31st DAY OF JULY 2024 / 9TH SRAVANA, 1946 MACA NO. 177 OF 2018 AGAINST THE AWARD DATED 14.07.2017 IN OPMV NO.26 OF 2016 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM APPELLANT/PETITIONER: RAVEENDRAN, AGED 49 YEARS S/o KRISHNANKUTTY, PARAGOTTIL HOUSE, AKALUR POST, PALAKKAD DISTRICT. BY ADVS. SRI.R.SREEHARI SRI.SACHIN VYAS RESPONDENTS/RESPONDENTS:

1 ABU-THAHIR, AGED 25 YEARS, S/o MUHAMMED RAFEEQ, PADINJARETHIL HOUSE, MANGALAM POST, LAKKIDI PERUR, OTTAPALAM TALUK - 679 301. 2 SULIMAN, S/o KUNJALAVI,

9/10(17/100), NAMBEETTUKULAM HOUSE, MANGALAM POST, LAKKIDI PERUR, OTTAPALAM TALUK 679 301. 3 NEW INDIA ASSURANCE COMPANY LIMITED, BRANCH OFFICE, J R J COMPLEX, OTTAPALAM 679 101. BY SRI.JOY JOSEPH (MANAYATHU), SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR HEARING ON 31.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA No.177 of 2018 2

JUDGMENT

This appeal has been filed by the claimant in OP(MV) No.26/2016 on the file of the Motor Accidents Claims Tribunal, Ottapalam. The respondents herein are the respondents before the tribunal.

2. According to the appellant, on 21.09.2015, at about

6.30 p.m., while the petitioner was riding a motorcycle bearing Registration No.KL-51/1274 from Ottapalam to Akaloor, a tipper lorry bearing Registration No.KL-45-1268 driven by the first respondent in a rash and negligent manner, hit against the petitioner's motorcycle, causing severe injuries to the petitioner. The appellant approached the tribunal claiming a total compensation of 6,21,000/- limited to 6,00,000/-.

3. The third respondent-insurer filed a written statement,

admitting the insurance policy, but disputing the quantum of compensation claimed. Before the tribunal, oral evidence was adduced by the petitioner and Exts.A1 to A12 were marked on the side of the appellant/petitioner and Ext.B1 on the side of the MACA No.177 of 2018 3 respondents. The tribunal, after analysing the pleadings and materials on record, awarded a sum of 2,25,340/- as compensation under different heads with interest @9% per annum from 04.01.2016 till realization, against the third 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 third respondent- insurer.

5. The learned counsel for the appellant claims enhancement mainly under the following heads:- 5.1 Loss of earning: The learned counsel for the appellant submitted that he was a

Carpenter and the income claimed was Rs.25,000/- per month, but the Tribunal has awarded only an amount of Rs.6,000/- per month. It is true that the appellant could not prove his income. Considering the judgment in Ramachandrappa v. Manager, Royal Sundaram Alliance [(2011) 13 SCC 236], I fix the notional monthly income at Rs.10,000/- per month. Accordingly, the compensation payable under the head of loss of earning is recalculated thus: Rs.60,000/-

MACA No.177 of 2018 4 (Rs.10,000 x 6). Hence, there will be an additional amount of Rs.24,000/- under the said head. 5.2 Bystander expenses: On a perusal of the award, it is seen that the tribunal has

taken only Rs.200/- per day for awarding compensation under the said head. Considering the fact that the accident occurred in the year 2015, I am inclined to grant Rs.400/- per day for awarding compensation under the said head. Accordingly, the appellant will be entitled to an additional amount of Rs.800/- (400x4 =1600-800) under the said head. 5.3 Pain and suffering: The appellant had sought for Rs.40,000/- towards the said head. But, the tribunal has awarded only an amount of Rs.25,000/- under the said head. Considering the nature of the injuries, I find that an additional amount of Rs.5,000/- can be granted under the said head. Accordingly, the total compensation payable under the said head will be Rs.30,000/-. 5.4 Loss of enjoyment and amenities of life:

Though the appellant claimed an amount of Rs.30,000/- under the said head, the tribunal has awarded only an amount of

MACA No.177 of 2018 5 Rs.12,500/-. At the time of the accident, he was aged 48 years. Considering the age of the appellant and the injuries sustained, I am inclined to grant an additional amount of Rs.12,500/- under the said head. The

total amount payable under the said head will be Rs.25,000/-. 5.5 Continuing permanent disability:

Since the notional income has been re-fixed at Rs.10,000/-, the compensation payable under the said head is recalculated thus: Rs.1,37,280/- (Rs.10,000 x 12 x 13 x 8.8 /100). There will be an additional amount of Rs.54,910/- under the said head. 5.6 Future medical expenses: The learned counsel further submitted that pursuant to the

award passed, the appellant had undergone further medical treatment and has produced medical bills as additional Annexure X1 series before this court. It is submitted that the total expenses incurred by the appellant for the future medical treatment comes to Rs.19,623/-. On a perusal of the award, it is seen that the tribunal has already awarded an amount of Rs.10,000/- under the said head. The learned Standing Counsel appearing for the insurance company submitted that the amount covered by Annexure X1

MACA No.177 of 2018 6 series is Rs. 19,623/-. Since the appellant has produced additional Annexure X1 series documents, the original bills to prove his claim, I am inclined to grant an additional amount of Rs.9,623/- under the said head. The total compensation payable under the said head will be Rs.19,623/-. Thus, the impugned award of the tribunal is modified as follows; Sl.No. Head of claim Amount Amount modified total compensation claimed awarded in appeal by the tribunal 1 Loss of 75,000 36,000 24000 60,000 earning 2 Transportation 5000 3000 Not expenses modified 3000

3	Extra	5000	800	Not	800
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expenses 6 Future medical 50000 10000 9623 19623 expenses MACA No.177 of 2018 7 7 Bystander 15000 800 800 1600 expenses 8 Pain and 40000 25000 5000 30000 suffering 10 Compensation 200000 82370 54910 137280 for continuing permanent disability 11 Compensation 50,000/- - - - for loss of earning power 12 Loss of 30000 12500 12500 25000 enjoyment and amenities of life Total 621000 225340 106833 332173 Limited to 6,00,000 Accordingly, the appeal is allowed in part and the

appellant/claimant is awarded an additional compensation of 1,06,833/- (Rupees One Lakh Six Thousand Eight Hundred Thirty Three only) over and above the compensation awarded by the tribunal with interest @ 8% per annum from the date of petition till realization and proportionate costs. It is made clear that the appellant is entitled interest at the rate of 8% per annum for the amount of Rs.9,623/- (future medical expenses) only from the date of production of Annexure X1 series (12.01.2018). The respondent insurer shall deposit the said amount together with interest and

MACA No.177 of 2018 8 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 88 days in filing the appeal.

Sd/- SHOBA ANNAMMA EAPEN JUDGE DMR/-

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