

Ramseen vs Mohammed

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Court : Kerala

Decided On : Mar-27-2024

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : MACA/103/2014

Appellant : Ramseen

Respondent : Mohammed

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 27TH DAY OF MARCH 2024 / 7TH CHAITHRA,
1946 MACA NO. 103 OF 2014 AGAINST THE JUDGMENT/AWARD
DATED 24.07.2012 IN OPMV NO.1109 OF 2008 OF MOTOR
ACCIDENT CLAIMS TRIBUNAL , MANJERI APPELLANT/PETITIONER:
RAMSEEN AGED 28 YEARS S/O.KUNNUMAL UMMER,
POOCHAPOYIL, ANJACHAVADI.P.O., KALIKAVU. BY ADVS.
SRI.P.VENUGOPAL (1086/92) SMT.T.J.MARIA GORETTI
RESPONDENTS/RESPONDENTS:

1 MOHAMMED S/O.ALAVIKUTTY, PERUR HOUSE, CHERUPALLI, KARAKKUNNU.P.O., MANJERI VIA.676 121. 2 THE UNITED INDIA ASSURANCE COMPANY LIMITED VARIKKODAN BUILDING, NILAMBUR ROAD, MANJERI, MANJERI.P.O. 676 121. BY ADVS. SRI.K.VIDYASAGAR SMT.P.A.REZIYA THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 27.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

SOPHY THOMAS, J.

===== M.A.C.A. No. 103 of 2014
=====

JUDGMENT

Dated this the 27th day of March, 2024 This appeal at the instance of the petitioner in O.P. (MV) No. 1109 of 2008 on the file of Motor Accidents Tribunal, Manjeri, challenging the contributory negligence found against the petitioner, and also inadequacy of the compensation awarded.

2. The appellant/petitioner aged 23 was a painting worker

by profession, and on 20.12.2007 at 09.45 pm, he met with a road traffic accident, while he was riding his motorcycle through Malappuram - Kalikavu road. When he reached Cherani, KL-10T-2749 autorikshaw driven by the 1st respondent in a rash and negligent manner dashed against his motorcycle, and he was thrown down and he sustained injuries including heel pad avulsion. He was admitted and treated at Kozhikode Medical ..3..

College Hospital for a period of 37 days, in two different spells. He had suffered permanent disability also, due to the injuries suffered in the accident. He approached the Tribunal claiming compensation of

Rs.1,50,000/-. But the Tribunal awarded Rs.29,712/-. But 50% was deducted from that amount finding that, he was also equally responsible for that accident. The 1st respondent was the owner cum driver of the offending autorikshaw. The 2nd respondent was its insurer. The 2nd respondent insurer admitted the policy.

3. In the appeal, both respondents entered appearance.

4. Heard learned counsel for the appellant, and learned counsel for the 2nd respondent insurer.

5. Now this Court is called upon to find out whether there is any illegality, impropriety or irregularity in the award of the Tribunal warranting interference by this Court.

6. Learned counsel for the appellant is impugning the award mainly on two grounds. The quantum of compensation awarded ..4.. by the Tribunal is arbitrarily low, and the finding of contributory negligence to the extent of 50% is not correct.

7. According to the appellant, he was a painting worker

earning monthly income of Rs.7,500/-. But the Tribunal notionally fixed his income @ Rs.3,500/-. True that, no documents were produced by the appellant to prove his job or income. Even then, going by the decision Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [AIR 2011 SC 2951], as the accident was in the year 2007, he was eligible to get his notional income fixed @ Rs.6,000/-. So, this Court is inclined to fix his notional income @ Rs.6,000/- per month. For loss of earning for three months, he was eligible to get Rs.18,000/-. Deducting the amount already awarded, i.e. Rs.10,500/-, he is entitled to get the balance amount of Rs.7,500/-.

8. Exts. A3 and A4 documents will show that the appellant was admitted in Medical college Hospital, Kozhikode for a total ..5..

period of 37 days. Learned Tribunal awarded Rs.3,700 @ Rs.100 per day. Since the accident was in the year 2007, this Court is of the view that Rs.150 per day is quite reasonable. So, the appellant was entitled to get Rs.5,550 (37 x 150) towards bystander expenses. Deducting Rs.3,700/- already paid, he is entitled to get the balance RS.1,850/- as enhanced compensation towards bystander expenses.

9. Towards extra nourishment, though the appellant claimed

Rs.2,000/-, no amount was seen awarded by the Tribunal. He was hospitalized for 37 days with extensive lacerated wound on his left foot exposing tendons and muscles, and there was heel pad avulsion also. So, this court is inclined to award Rs.2,000/- towards extra nourishment as claimed by the appellant.

10. Towards pain and suffering, though the appellant claimed

Rs.30,000/- the Tribunal awarded only Rs.7,500/-. As already stated there was extensive laceration on his left foot, exposing tendons and muscles with heel pad avulsion. Considering that ..6.. aspect, this Court is inclined to award Rs.12,500/- towards pain and suffering. Deducting Rs.7,500/-, already awarded, he is entitled to get the balance amount of Rs.5,000/-.

11. Towards permanent disability, learned Tribunal awarded

only Rs.5,000/- though the Medical Board as per Ext.X1 disability certificate assessed his permanent disability @ 3%. Taking his monthly income as Rs.6,000/-, the disability compensation for permanent disability of 3% can be assessed as Rs.38,380 (6000 x 12 x 18 x 3/100). Deducting Rs.5,000/- already paid, the balance will be Rs.33,880/-.

12. Learned counsel for the appellant would say that the

accident occurred due to the rash and negligent driving of the offending autorikshaw by the 1st respondent. Learned Tribunal, finding that, it was

a head on collusion between the motorcycle driven by the appellant and the autorikshaw driven by the 1st respondent fixed 50% contributory negligence on him finding that he was equally responsible for the accident, and the ..7..

compensation amount was reduced by 50%.

13. In the appeal, the appellant produced additional

documents i.e. the final report in Crime No. 933 of 2007 of Manjeri police station, which shows that, the 1st respondent alone was responsible for the accident, and he was charged under Sections 279, 337 and 338 of IPC. That document was accepted in appeal as per petition filed under order 41 Rule 27 of the Code of Civil Procedure. Since the investigation revealed that, the 1st respondent alone was the person responsible for the accident, and there is nothing to show that the appellant contributed towards that accident, deduction of 50% from the compensation amount awarded by the Tribunal is liable to be reversed. The compensation amount awarded by the Tribunal was Rs.29,712/-. After deducting 50%, only the balance Rs.14,856/- alone was given to the appellant. Since the finding of contributory negligence to the extent of 50% is set aside, the appellant is entitled to get Rs.14,856/- which was deducted towards 50% ..8..

contributory negligence.

14. The enhanced compensation awarded in this appeal is

given in the table below:-

SL. No	Head	Amount	Difference to be claim awarded
1	Loss of earnings	10,500/-	18,000/-
2	Bystander	3,700/-	5,550/-
3	expenses	1,850/-	2,000/-
4	Extra	2,000/-	2,000/-
5	nourishment	7,500/-	12,500/-
6	Pain and suffering	5,000/-	5,000/-
7	Permanent disability	5,000/-	38,380/-
8	50% deducted by the Tribunal	14,856/-	Total 33,880/-

6,5086/-

15. In the result the appellant is entitled to get enhanced compensation of Rs. 65,086/- in total (7500 + 1850 + 2,000 + 5,000 + 33,880 + 14,856).

16. The 2nd respondent Insurer is directed to deposit the enhanced compensation of Rs. 65,086 /- in the bank account of ..9..

the appellant with interest @ 9% per annum from the date of petition till the date of deposit (except 433 days of delay in filing the appeal) within a period of two months from the date of receipt of a copy of this judgment. The deposit must be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06/09/2019 and clarified in O.M.No.D1/62475/2016 dated

towards Tax, balance court fee and legal benefit fund. The appeal stands allowed to the extent as above, and no

order is made as to costs.

Sd/- SOPHY THOMAS JUDGE RMV TRUE COPY P.A.TO JUDGE

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