

Jayan K.G vs the Branch Manager

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/1317/2013

Appellant : Jayan K.G

Respondent : The Branch Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945
AGAINST THE AWARD DATED 17.09.2012 IN OP(MV)NO.475/2010 OF
MOTOR ACCIDENT CLAIMS TRIBUNAL, WAYANAD KALPETTA

APPELLANT/PETITIONER: JAYAN K.G. AGED 31 YEARS
S/O.K.P.GOPALAN, OORAMKUNNU, PUZHAMUDI POST,
VENGAPPALLY, KALPETTA, VYTHIRI TALUK. BY ADV CELINE
JOSEPH RESPONDENT/RESPONDENT NO.3: THE BRANCH
MANAGER NEW INDIA ASSURANCE COMPANY LTD., BRANCH
OFFICE, M.G.T.BUILDINGS, KALPETTA, PIN - 673121. BY ADV
N.S.MOHAMMED USMAN THIS MOTOR ACCIDENT CLAIMS APPEAL

HAVING COME UP FOR ADMISSION ON 01.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was the petitioner in O.P.(M.V.) No.475 of 2010 on the files of the Motor Accident Claims Tribunal, Wayanad, Kalpetta. The said claim petition was submitted by him seeking compensation for the injuries sustained to him in a motor accident that occurred on 11.11.2008.

2. According to the appellant, the accident occurred

when the motorcycle ridden by him was hit by a goods autorickshaw bearing Registration No.KL 12 C/3838, driven by the 1st respondent in the claim petition in a rash and negligent manner. The appellant was working in Indian Army and the monthly income claimed was Rs.20,000/-. He sustained serious injuries, which resulted in permanent disablement as well. The claim petition was submitted in such circumstances seeking total compensation of Rs.10,00,000/-.

3. The 3rd respondent in the claim petition/the respondent

herein, who was the insurer of the autorickshaw, filed a written statement admitting the coverage of policy for the said vehicle. However, they disputed negligence on the part of the 1st respondent in driving the said vehicle. The quantum of compensation was also seriously disputed by them.

4. The evidence, in this case, consists of Ext.A1 to A8

and the disability certificate issued by the District Hospital, Mananthavady, was marked as Ext.C1. After appreciating the materials placed on record, the Tribunal found that the accident occurred due to negligence on the part of the 1st respondent. Accordingly, all the respondents, i.e., the driver, owner and the insurer, were held jointly and severally liable to pay the compensation. As the coverage of policy was admitted by the 3rd respondent in the claim petition, they were directed to deposit an amount of Rs.1,12,080/- as compensation, with interest @ 7.5% per annum from the date of petition till the date of payment and

proportionate cost. This appeal is submitted by the appellant seeking enhancement of compensation in such circumstances.

5. Heard Smt.Celine Joseph, learned counsel appearing for the appellant and Sri.N.S. Mohammed Usman, learned counsel appearing for the respondent Insurance Company herein/3rd respondent in the claim petition.

6. The specific contention raised by the learned counsel

for the appellant is in relation to the inadequacy of compensation awarded by the Tribunal under various heads, particularly under the head of disability. It was pointed out that, even though the materials produced by the appellant would suggest that the nature of injuries and the disability arising therefrom had a huge impact on his career in the Indian Army, a meagre amount of Rs.38,880/- was granted for permanent disability. On perusal of the records, I find force in the said contention. The Tribunal accepted only Rs.3,000/- as the monthly income for making the assessment, and the multiplier applied was only 9. Similarly, even though in Ext.C1 disability certificate, the percentage of disability certified by the Medical Board as per the National Institute of Orthopedically Handicapped Scale (N.I.O. H.) was 28%, which is the certification made by the District Medical Board, Wayanad under the Mc. Bride Scale, the Tribunal accepted only 12%. The reason adopted by the Tribunal was that the assessment as per NIOH is significant when functional disability is taken into account and hence the same cannot be considered. However, I am not inclined

to accept the said contention. As far as the compensation for disability under the provisions of the Motor Vehicles Act is concerned, the same has to be calculated by taking into account the impact of such disability on the capacity of the victim to earn his livelihood. Therefore, what is relevant is the functional disability and, therefore, the certification of disability which reflects the functional disability has to be taken into account. Therefore, I am of the view that 28% certified in the disability certificate could be accepted for assessing the compensation in this case. This is particularly because, it is evident from the Ext.A6 certificate issued from the Indian Army that, consequent to the injuries sustained, he was placed in a low medical category for the purpose of continuing in the employment. Thus, the

disability suffered by him had a decisive impact on his career and it affected the prospects of the appellant as well. Therefore, in all respects, functional disability needs to be taken into account, and accordingly, 28% of disability is accepted.

7. The next aspect to be taken into consideration is the monthly income. The Tribunal assessed the compensation by

taking the monthly income as Rs.3,000/- which appears to be very meagre. Of course, it is true that even though a monthly income of Rs.20,000/- was claimed, the same cannot be accepted in view of the fact that he was permitted to continue in the employment even though there was down gradation in the post which he was holding. Therefore, his services were not terminated even after suffering injuries, so he is getting a salary. However, considering the downgradation in employment and the adverse impact on the promotion and other future prospects, the compensation has to be granted by taking a reasonable monthly income. Considering the fact that the accident occurred in the year 2008, I deem it appropriate to fix the monthly income for the said purpose as Rs.6,500/- which is calculated on the basis of the method of computation of the monthly income evolved from the principles laid down in *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd* [(2011) 13 SCC 236], and *Syed Sadiq v. Divisional Manager, United India Insurance Company* [(2014) 2 SCC 735]. As far as the multiplier is concerned, as the injuries were sustained by him at the age of 29 years and had a

crucial impact on his career, the same can be taken as 17, which is applicable to the age group of 26 to 31. Thus, while assessing the compensation with the above criteria, the amount for compensation for loss of disability and loss of earning power would come to Rs.3,71,280/- [$6500 \times 12 \times 17 \times 28\%$]. The amount already awarded by the Tribunal under this head is 38,880/- and thus the additional compensation would come to Rs.3,32,400/-.

8. When moving on to other heads, it can be seen that

the Tribunal awarded an amount of Rs.15,000/- towards pain and suffering. It is discernible from the records that he had undergone inpatient treatment for 27 days

in a hospital in Calicut. Thereafter, he availed inpatient treatment in various military hospitals for a prolonged period, and ultimately, his inpatient treatment came to an end only on 08.01.2010. He was admitted to the hospital on various occasions during the said period. The injuries sustained by the appellant include type II open bone fracture in the right leg and cervical spine sprain. Considering the nature of the injuries, the disability that arose therefrom, and the prolonged treatment, I am of the view that a substantial enhancement needs to be

granted to the appellant under the head of pain suffering. In the

facts and circumstances of the case, I deem it appropriate to grant

a further sum of Rs.30,000/- under the said head. The next aspect is the loss of amenities, and the amount awarded by the Tribunal is Rs.5,000/- only. The said amount is very meagre considering the prolonged treatment which he availed and the physical disability suffered by him. Therefore, a further sum of Rs.25,000/- is awarded under the said head. Considering the long period of inpatient treatment and the continued treatment even after discharge from the hospital, a further sum of Rs.2,300/- is awarded for extra nourishment. Thus, the total additional compensation is determined as Rs.3,89,700/- (3,32,400 + 30,000 + 25,000 + 2,300).

9. In the light of the above observations and findings, this appeal is allowed. The award dated 17.09.2012 passed by the

Motor Accident Claims Tribunal, Kalpetta in O.P.(M.V.) No.475/2010 is hereby modified by granting an additional compensation of Rs.3,89,700/- (Rupees three lakhs eighty nine thousand and seven hundred only) and the said amount shall be

deposited by the respondent herein, the 3rd respondent in the claim petition, with interest at the rate as ordered by the Tribunal and with proportionate costs within a period of three months from the date of receipt of a copy of this judgment. As the appeal was filed with a delay of 173 days, the respondent herein/3rd respondent in the claim petition shall be at liberty to exclude the said period while computing

the interest on the additional compensation.

It is further clarified that the claimant shall furnish the details

of the PAN card, Aadhar Card and bank details to enable the Insurance Company to make the deposit as ordered above, within period of two months from the date of receipt of a copy of this judgment. In case, he fails to furnish the said details, it shall be open for the insurance company to deposit the same amount before the Tribunal.

Sd/- ZIYAD RAHMAN A.A. JUDGE scs APPENDIX OF MACA 1317/2013
RESPONDENT EXHIBITS ANNEXURE - A1 TRUE COPY OF THE SALARY
DETAILS OF THE PETITIONER

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