

Rosy vs C.D. Shaju

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Court : Kerala

Decided On : Jan-05-2024

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

Appeal No. : MACA/1240/2011

Appellant : ROSY

Respondent : C.D. Shaju

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TH
FRIDAY, THE 5 DAY OF JANUARY 2024 / 15TH POUSHA, 1945 MACA
NO. 1240 OF 2011 AGAINST THE ORDER/JUDGMENT OPMV
1894/2004 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,THRISSUR
APPELLANT/PETITIONER: ROSY, AGED 47 YEARS D/O.
KUNJUVAREED, NEDUMPARAMBIL HOUSE,, P.O.IRINJALAKUDA,
NOW RESIDING AT POPE PAUL, PEACE HOME, AMBALAPURAM,
ATHANI.P.O., PERINGANDOOR BY ADV SRI.P.K.SAJEEV
RESPONDENTS/RESPONDENTS: 1 C.D. SHAJU
P.O.CHETTUPUZHA, THRISSUR-680621. 2 SUGATHAN
KODAPARAMBIL HOUSE VARANDHARAPPILLY VILLAGE,

VADAKUMMURI DESOM,, THRISSUR.P.O., VARANDARAPPILLY-680303. 3 THE MANAGER NATIONAL INSURANCE COMPANY LTD., AMBIKA ARCADE, M.G.ROAD,, THRISSUR, P.O.THRISSUR, PIN-680001. BY ADV P.A.REZIYA THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 05.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was the petitioner in O.P(M.V) No. 1894/2004 on the files of the Motor Accidents Claims Tribunal, Thrissur. The said claim petition was submitted by her seeking compensation for the injuries sustained to her in a motor accident that occurred on 07.05.2004. The accident occurred, when the bus in which the appellant was travelling, met with an accident. The 1 st respondent was the owner, the 2nd respondent was its driver and it was insured with the 3rd respondent. It was claimed that the appellant was a helper in Pope Paul Peace Home, Peringandoor with a monthly income of Rs.2,000/-. She sustained permanent disablement due to the injuries, and the claim petition was submitted in such circumstances.

2. The 3rd respondent /insurance company alone contested the matter by filing a written statement wherein, they admitted the insurance converge for the bus. However, they disputed the liability on various grounds. The quantum of compensation was also disputed by them.

3. The evidence in this case consists of Exts.A1 to A10 from the side of the appellant and from the side of the respondent Ext.B1 was marked. After the trial, the Tribunal came to the

conclusion that the accident occurred due to the negligence on the

part of the driver of the bus and being the insurer, the 3 rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.49,400/- and the 3 rd respondent was directed to deposit the said amount

along with interest at the rate of 8% per annum from the date of petition till realisation with proportionate cost. This appeal is submitted by the appellant in such circumstances seeking enhancement of compensation.

4. Heard, Sri.P.K Sajeew, the learned counsel appearing for the appellant and Smt.P.A Raziya, the learned counsel appearing for the 3rd respondent/insurance company.

5. The only challenge in this appeal relates to the

quantum of compensation under various heads. As regards the compensation for disability, the learned counsel for the petitioner contends that even though Ext.A7 disability certificate was produced wherein the disability was certified as 25%, the Tribunal reduced the same and accepted only 4% of the disability.

6. On the other hand the learned counsel for the insurance company opposes the said contention.

7. I have carefully gone through Ext.A6 and the other

medical records produced, which are Ext. A7 series and Ext.A5 wound certificate. It is to be noted that the Tribunal did not consider the percentage of disability certified in Ext.A7 mainly because of the fact that the said document was not proved by examining the Doctor. On perusal of the said document it is seen that, the said certificate was issued by an Associate Professor of Orthopedics of Medical College Hospital, Thrissur. As per the said certificate 5% of the disability was assessed due to the fracture of ribs and 20% as assessed due to the deformity to the spinal cord. Thus the crucial aspect to be noticed is that, even though in Ext.A5 and Ext.A6, the injuries sustained by the appellant on her ribs were specifically noted but there is no mention about any injuries sustained to her spinal cord. Therefore, in the absence of any such documents, I am of the view that 25% disability

certified in the disability certificate cannot be accepted. This is particularly because, the Doctor who issued Ext.A7 was not the Doctor who treated the appellant as well. In such circumstances, I am inclined to take the disability as 5%

as certified in Ext.A7 for a fracture of ribs.

8. As regards the monthly income, the Tribunal accepted

the claim of the appellant in this regard, which was Rs.2,000/-. In such circumstances, while reassessing the compensation by taking the percentage of disability as 5%, the compensation under the head of disability would come to Rs.16,800/- ($2000 \times 12 \times 14 \times \text{Rs.13,440/-}$ and the additional amount under this head would come to Rs.3,360/-.

9. It is seen that the appellant sustained fracture of 11th

and 12th ribs and D11. She had undergone inpatient treatment for 5 days and continued the treatment even thereafter. In such circumstances, I find that the amount of Rs. 16,000/- awarded under the head of pain and suffering is on the lower side. Therefore, a further sum of Rs.9,000/- is granted taking note of the nature of injuries and the treatment availed by her.

10. The Tribunal did not award any compensation for the loss of amenities even though an amount of Rs.15,000/- was claimed. Considering the nature of injuries and the disability resulting therefrom, I deem it appropriate to grant an amount of Rs.15,000/- under the said head. Thus the total additional compensation receivable by the appellants is determined as Rs. 27,360/- [$3360+9000+15000$]. In the light of the aforesaid observations and findings, this appeal is allowed. The award dated 25.02.2011 passed by the Motor Accidents Claims Tribunal, Thrissur, in O.P.(M.V) No.

compensation of Rs. 27,360/-(Rupees twenty seven thousand, three hundred and sixty only) which shall be deposited by the 3 rd respondent/insurance company with interest at the rate as ordered by the Tribunal and proportionate cost within a period of three months from the date of receipt of a copy of this judgment. Sd/-
ZIYAD RAHMAN A.A. JUDGE rpk

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