

Aboobacker vs Subair

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Court : Kerala

Decided On : Jan-31-2024

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

Appeal No. : MACA/1344/2011

Appellant : Aboobacker

Respondent : Subair

Judgement :

MACA NO. 1344 OF 2011 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA,
1945 MACA NO. 1344 OF 2011 AGAINST THE AWARD DATED
20.12.2010 IN OP(MV)NO.832/2007 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL, OTTAPPALAM APPELLANT/PETITIONER: ABOOBACKER,
AGED 54 YEARS, S/O.BUHARIA KUNHUTTY, ARACKAL HOUSE,
EDAPAL,, THUYYAM P.O., PONNANI TALUK, NOW RESIDING AT,
C/O.FAISAL A.K., APPATTUM KATTIL HOUSE,, ANAKARA P.O.,
OTTAPALAM TALUK. BY ADVS. SRI.G.SREEKUMAR (CHELUR)

SRI.K.RAVI PARIYARATH RESPONDENTS/RESPONDENTS:

1 SUBAIR, AGED 36 YEARS, S/O.ENU, PUTHU VEETIL HOUSE, PURANGU, NEAR JHANODHAYAM, LIBRARY, PURANGU P.O., PONNANI TALUK,, MALAPPURAM DISTRICT-676505. (DRIVER OF KL-10/Y-9668, MOTOR CYCLE). 2 KUNHU MOHAMMED AGE NOT KNOWN S/O.ABOOBACKER, PUTHEN, ELEYEDATH HOUSE,, PURANGU P.O., MARANCHERY, PONNANI TALUK,, MALAPPURAM DISTRICT-676505. 3 THE UNITED INDIA INSURANCE CO.LTD. BRANCH OFFICE, WESTERN WING AMBADI BUILDING,, PONNANI-676505. (INSURER OF KL-10/Y-9668 MOTOR CYCLE),, (VALIDITY FROM 06-06-06 TO 05-06-07). BY ADV SHRI.P.K.MANOJ KUMAR FOR R3

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 1344 OF 2011 2 ZIYAD RAHMAN, A.A, J M.A.C.A No. 1344 of 2011 st Dated this the 31 day of January, 2024

JUDGMENT

The appellant was the petitioner in OP(MV)No.832/2007 on the files of the Motor Accidents Claims Tribunal, Ottapalam.

2. The said claim petition was submitted by the

appellant, seeking compensation for the injuries sustained to him in a motor accident that occurred on 02.03.2007. The accident occurred when the appellant was knocked down by a motorcycle bearing Registration No.KL-10Y-9668, ridden by the first respondent. The second respondent was the owner and it was insured with the third respondent. The appellant was aged 50 years, and according to him, he was running an STD booth with a monthly income of Rs.8000/-. He sustained serious injuries in the accident, and the claim petition was submitted in such circumstances.

3. The third respondent, the Insurance Company alone,

contested the matter by filing a written statement wherein they admitted the coverage of the policy. However, they contended that the rider of the motorcycle was not having a valid driving MACA NO. 1344 OF 2011 3 license, and the police charge-sheeted him for the offence punishable under Section 3(1) r/w Section 181 of the Motor Vehicles Act. The quantum of compensation was also disputed.

4. The evidence in this case consists of Exts.A1 to A9 from the side of the appellant and the policy copy was marked as Ext.B1 from the side of the respondents.

5. After the trial, the Tribunal came to the conclusion

that the accident occurred due to negligence on the part of the rider of the motorcycle, the first respondent. However, it was found that the first respondent did not have a valid driving license. Even though the third respondent was held liable to pay the compensation, they were granted the right to recover the compensation from the first and second respondents after satisfaction of the award. The quantum of compensation was fixed as Rs.1,18,100/- (Rupees one lakh eighteen thousand one hundred and only) and the third respondent was directed to deposit the said amount along with interest @ 7% per annum

from the date of petition till realisation. This appeal is submitted by the appellant seeking enhancement of compensation in such circumstances.

6. Heard Adv.Sri.Ravi K Pariyarath, the learned counsel MACA NO. 1344 OF 2011 4 appearing for the appellant and Adv.P.K.Manojkumar, the learned counsel appearing for the third respondent-Insurance Company.

7. The only issue to be decided in this appeal is

relating to the enhancement of compensation. The learned counsel for the appellant points out the monthly income taken by the Tribunal for the purpose of assessing the compensation for loss of earnings was extremely on the lower side. It was pointed out that even though the monthly income of Rs.8000/- was claimed, the Tribunal accepted a meagre income of Rs.2500/-. I find some force in the said contention. It is to be noted in this regard, even though no convincing evidence is

available, as per the method of computation of 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], under no circumstances the monthly income of less than Rs.6000/- can be accepted for an accident occurred in the year 2007. Therefore, the same is accepted in this case. The Tribunal awarded compensation for loss of earnings for a period of MACA NO. 1344 OF 2011 5 three months, taking note of the fact that he had undergone inpatient treatment for a period of 28 days. The said period appears to be reasonable, considering the nature of avocation. This would result in an additional compensation of Rs.10,500/-.

8. The next head which requires consideration is for pain and suffering awarded by the Tribunal is Rs.12,000/-. It is discernible from the records that the appellant sustained intertrochanteric with subtrochanteric fracture of the left hip

besides the other injuries. He had undergone inpatient treatment for a period of 28 days, and even thereafter, he continued the treatment as an outpatient. Therefore, a further sum of Rs.13,000/- is awarded under the head of pain and suffering. Considering the nature of injuries and the difficulties that may arise therefrom, I deem it appropriate to grant a further sum of Rs.10,000/- under the head of loss of amenities as the amount of Rs.5000/- appears to be on the lower side. Thus, the total additional compensation is determined to be Rs.33,500/-.

9. In the light of the aforesaid observations and findings, this appeal is allowed, the award dated 20.12.2010 in OP(MV)No.832/2007 passed by the Motor Accidents Claims MACA NO. 1344 OF 2011 6 Tribunal, Ottapalam is hereby modified by granting an additional compensation of Rs.33,500/- (Rupees thirty three thousand five hundred only). The third respondent is directed to deposit the said amount along with interest @ as ordered by

the Tribunal and proportionate costs, within a period of three months from the date of receipt of a copy of this judgment. However, it is clarified that, as this court did not interfere with the finding of the tribunal granting right of recovery to the third respondent, it shall be open for the third respondent to recover the said

compensation from the respondents 1 and 2,

after satisfaction of the award. It is further clarified that, as the delay of 1120 days in filing the appeal is condoned by this court on the condition that, the appellant shall not be entitled to interest for the said period, the third respondent shall be at liberty to exclude the said period, while computing the interest for the additional compensation.

sd/- ZIYAD RAHMAN, A.A, JUDGE R.AV

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