

Manoj Kumar vs the Divisional Manager

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Court : Kerala

Decided On : Sep-11-2023

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

Appeal No. : MACA/45/2019

Appellant : Manoj Kumar

Respondent : The Divisional Manager

Advocate for Pet/Ap. : Sri. Pratheesh P

Judgement :

M.A.C.A.No.45/19 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
MONDAY, THE 11TH DAY OF SEPTEMBER 2023 / 20TH BHADRA,
MACA NO. 45 OF 2019 AGAINST THE ORDER/JUDGMENT OPMV
1383/2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOLLAM
APPELLANTS/PETITIONERS: 1 MANOJ KUMAR, AGED 39 YEARS,
S/O.RAMACHANDRAN PILLAI, MANOJ HOUSE, MEENAKSHI NAGAR-
1, PUNTHALATHAZHAM, VADAKKEVILA, KOLLAM -691 021. 2
ANJANA, AGED 10 YEARS, D/O.MANOJ KUMAR, MANOJ HOUSE,

MEENAKSHI NAGAR-1, PUNTHALATHAZHAM, VADAKKEVILA, KOLLAM -691 021.(MINOR REPRESENTED BY THE 1ST APPELLANT HER FATHER). BY ADVS. PRATHEESH.P SMT.RENY ANTO RESPONDENT/3RD RESPONDENT: THE DIVISIONAL MANAGER, M/S.NATIONAL INSURANCE CO.LTD., KOLLAM-691 001. SMT.P.K.SANTHAMMA, STANDING COUNSEL THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 11.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: M.A.C.A.No.45/19 2

JUDGMENT

The appellants are the petitioners in O.P.(MV).No.1383 of 2015 of Motor Accidents Claims Tribunal, Kollam.

2. The aforesaid claim petition submitted under

Section 166 of the Motor Vehicles Act seeking compensation for the injuries sustained by the 2nd appellant, a minor aged seven years, at the time of the accident. The injuries were sustained to the 2nd appellant on 09.01.2015 at about 7.30 PM when the motorcycle on which the 2 nd appellant was travelling as a pillion rider was hit by a scooter ridden by the 2 nd

respondent in the claim petition. She sustained injuries in the accident and is seeking compensation for the same, the aforesaid claim petition was submitted, wherein Rs.2,00,000/- was claimed.

3. The respondents 1 to 3 in the claim petition have appeared and contested the claim. The 1 st and 2nd respondents, owner and driver of the vehicle, disputed the negligence on their part. It was also contended that the vehicle had a valid insurance policy with the 3rd respondent, and if at all any liability is fixed upon them, the same has to M.A.C.A.No.45/19 3 be indemnified by the 3rd respondent. The 3rd respondent filed a written statement admitting the coverage of policy but contended that the accident occurred due to the negligence of the rider of the motorcycle on which the 2 nd appellant was pillion riding. The quantum of

compensation was also disputed.

4. From the side of the appellants, no oral evidence was adduced, but Exts.A1 to A12 were marked. The respondents adduced no evidence. After examining the materials placed on record, the Tribunal arrived at the

conclusion that the accident occurred due to negligence of the

2nd respondent in the claim petition and therefore, the

respondent herein, the insurance company, was held

responsible for paying the compensation awarded. The quantum of the compensation was determined as Rs.1,31,535/- and the 3rd respondent Insurance Company was directed to deposit the said amount along with interest at the rate of 7% per annum from the date of petition till realization with proportionate costs. This appeal is submitted by the M.A.C.A.No.45/19 4 appellants in such circumstances, being dissatisfied with the quantum of compensation.

5. Heard Sri. Pratheesh P., learned counsel for the appellants and Smt.P.K.Santhamma, learned Standing Counsel for the respondent/Insurance Company.

6. One of the crucial contentions raised by the learned

counsel for the appellants is that the amount awarded under the head of permanent disablement is on the lower side. It was mainly contended that the annual income taken by the Tribunal is only Rs.36,000/-, which is on the lower side. The learned counsel relies on the decision rendered by the Honourable Supreme Court in Kajal v. Jagdish Chand and Others [AIR 2020 SC 776]. The learned Standing Counsel for the Insurance Company, on the other hand, would oppose the contention by pointing out that no disability certificate showing actual disability was produced by the appellants. The Tribunal has taken a notional disability for granting compensation.

7. From the materials placed on record, I find some force in the contention of the learned counsel for the M.A.C.A.No.45/19 5

Insurance Company in this regard. There is absolutely nothing to indicate any permanent disablement, but still, the Tribunal has taken 8% as the physical disability on a notional basis. In such circumstances, I am of the view that further enhancement on that ground is not at all necessary. Therefore, no interference is required under that head.

8. When moving on to the other heads, it is seen that

the amount awarded under the head of compensation for pain and suffering is Rs.25,000/-, which appears to be on the lower side. Considering the nature of injuries sustained, the tender age of the 2nd respondent and the date of the accident, I am of the view that a further sum of Rs.10,000/- would render justice to her. Similarly, some enhancement can be granted

under the head of compensation for loss of amenities. The amount awarded by the Tribunal under the head is 14,400/-, which can be fixed as Rs.20,000/-, further enhancing Rs.5,600/-. Thus, the appellant is found entitled to a further enhancement of compensation of Rs.15,600/-. Amounts awarded under the other heads are reasonable. M.A.C.A.No.45/19 6 In such circumstances, this appeal is disposed of by granting an additional amount of Rs.15,600/- (Rupees fifteen thousand and six hundred only), in addition to the amount already awarded by the Tribunal, and this amount shall be deposited by the respondent Insurance Company along with interest at the rate as ordered by the Tribunal and proportionate costs, within a period of three months from the date of receipt of a copy of the judgment. Sd/- ZIYAD RAHMAN A.A. JUDGE DG/12.9.23

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