

Rasheed vs Shaji

Rasheed vs Shaji

SooperKanoon Citation : sooperkanoon.com/1354026

Court : Kerala

Decided On : Jun-23-2023

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : MACA/425/2013

Appellant : Rasheed

Respondent : SHAJI

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946 MACA NO. 425 OF 2013 AGAINST THE AWARD DATED 30.04.2012 IN OPMV 1596/2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,PERUMBAVOOR APPELLANT/(PETITIONER IN O.P.(M.V.) 1596/2006: RASHEED, AGED 25 YEARS S/O.SUBAIR, EDAKUZHI HOUSE, VAYALKARA KUNUKARA. BY ADVS. SRI.REJI GEORGE SMT.ANUPAMA JOHNY SMT.R.REMJI RESPONDENTS/(RESPONDENT NO.1 TO 3 IN O.P.(M.V.)1596/2006:

1 SHAJI, S/O.SUSHEELAN, VETTIMUTTATHU HOUSE, KUNNUKARA VILLAGE, ADUVASSERY KARA, MALAIKUNNU BHAGOM-682021. *2 P.V.GOPI(DELETED) VADAKKEPALLICHAMBA HOUSE, PIPELINE ROAD, PALARIVATTOM, KOCHI-682025. (RESPONDENT NO. 2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER THE ORDER DATED 3 UNITED INDIA INSURANCE CO.LTD. OPPOSITE TVS, N.H.ROAD, KALOOR, KOCHI-682025.RESPONDENT NO. BY ADVS. SRI.RAJAN P.KALIYATH R1 BY ADV.A.K.CHINNAN (EXPIRED) R1 BY ADV.P.M.RAFEEQ,

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 425 OF 2013 :2:

JUDGMENT

The appellant is the claimant in O.P.(M.V.) No. 1596 of 2006 on the files of the Motor Accidents Claims Tribunal, Perumbavoor. The parties are referred to as per their status in the claim petition.

2. On 14.06.2006, while the petitioner was

travelling as a pillion rider on a motor cycle, a mini lorry bearing Registration No.KL-7/AB-6758, owned by the 1st respondent and driven by the 2nd respondent in a rash and negligent manner, hit the motor cycle and the petitioner sustained serious injuries. The petitioner claimed an amount of Rs.3,00,000/- as total compensation for the injuries sustained in the accident.

3. Before the Tribunal, respondents 1 and 2 remained ex parte. From the side of the petitioner, MACA NO. 425 OF 2013 :3: Exts.A1 to A12 were marked and PWs 1 to 3 were examined.

4. The 3rd respondent Insurance Company has

filed a written statement admitting the policy; but disputing the age, occupation and income of the petitioner. It was also contended that the accident was not reported

either by the petitioner or by respondents 1 and 2 to the 3rd respondent and the documents of the offending vehicle and driving license of the 2nd respondent were not produced for verification and also that the offending vehicle had no valid and effective fitness certificate and permit at the time of the accident.

5. The Tribunal found that the accident happened due to the negligence on the part of the 2nd respondent/driver of the mini lorry and awarded an MACA NO. 425 OF 2013 :4:

amount of Rs.1,66,869/- with 8% interest per annum from the date of petition till realisation. Since the insurance company contended before the Tribunal that the offending vehicle was not having valid and effective fitness certificate and permit at the time of

the accident, the 1st respondent was given an opportunity to produce the same. However, the 1st respondent failed to produce the same and hence the Tribunal held that respondents 1 to 3 are jointly and severally liable to indemnify the petitioner and directed the 3rd respondent insurance company to satisfy the award at the first instance and also to recover the same from the 1st respondent owner. I do not find any reason to interfere with the said finding.

6. The petitioner has preferred this appeal aggrieved by the quantum of compensation awarded MACA NO. 425 OF 2013 :5: by the Tribunal.

7. The accident occurred in the year 2006. At the

time of the accident, the petitioner was aged 19 years and was a painter by profession earning an amount of Rs.4,500/- per month. The Tribunal, in the absence of any other evidence, took the notional monthly income of the petitioner as Rs.3,000/-. In the light of the decision of the Honble Supreme Court reported in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [2011 (13) SCC 236], the petitioner is entitled for an amount of Rs.5,500/- as notional monthly income in the year

2006. Accordingly, I re-fix the monthly income of the petitioner as Rs.5,500/-.

8. The petitioner relied on Exts.A8 to A11 medical records. As per Ext.A8 wound certificate, the MACA NO. 425 OF 2013 :6:

petitioner sustained various injuries including three fractures. He also suffered head injury and was hospitalised for 18 days. Ext.A11 is the disability certificate issued by the doctor/PW3, who assessed the permanent disability of the petitioner as 8%. But, the Tribunal scaled down the percentage of whole body permanent disability from 8% to 6% without

assigning any reason. Accordingly, I fix the percentage of whole body permanent disability of the petitioner as '8%', as assessed in Ext.A11 certificate. The petitioner was aged 19 years at the time of the accident and the Tribunal has rightly taken the multiplier as '18'. Taking into account the above facts, the compensation awarded under various heads has to be reworked.

9. The petitioner was treated as an inpatient for MACA NO. 425 OF 2013 :7:

18 days. The Tribunal awarded an amount of Rs.9,000/- (3,000x3 months) as compensation for loss of earnings. Taking into account the nature of injuries sustained by the petitioner including three fractures, I find that the period of decumbiture should be enhanced to 4 months. Since I have already re-fixed the notional income of the petitioner as Rs.5,500/-, the compensation under the above head would come to Rs.22,000/- (5,500 x 4 months) and the petitioner is entitled for an enhanced amount of Rs.13,000/- (22,000-9,000).

10. An amount of Rs.1,800/- (100x18 days) was

awarded as compensation under the head attendant charges. I find that the petitioner can be awarded an amount of Rs.2,700/- (150 x 18) and he is entitled for an enhanced amount of Rs.900/- (2,700 - 1,800) MACA NO. 425 OF 2013 :8: under the said head.

11. Towards compensation for pain and sufferings, an amount of Rs.24,000/- has been awarded by the Tribunal. Taking into consideration the nature of injuries sustained by the petitioner including three fractures and 18 days of hospitalisation, I find that the petitioner has to be awarded an amount of Rs.40,000/- under the

said head and he gets an enhanced amount of Rs.16,000/- (40,000-24,000).

12. An amount of Rs.16,000/- has been awarded under the head compensation for loss of amenities. Taking into consideration the age of the petitioner, the nature of injuries sustained and the disability incurred, I find that an amount of Rs.30,000/- would be a just and reasonable compensation and I fix so. MACA NO. 425 OF 2013 :9: Therefore, the petitioner is entitled for an enhanced amount of Rs.14,000/- (30,000-16,000) under the above head.

13. Since I have re-fixed the notional monthly

income of the petitioner as Rs.5,500/- and the percentage of whole body permanent disability as 8%, the compensation under the head permanent disability is re-worked as Rs.95,040/- ($5,500 \times 12 \times 18 \times 8 / 100$). As the Tribunal has already awarded an amount of Rs.38,880/- under the said head, the petitioner is entitled for an enhanced amount of Rs.56,160/- (95,040-38,880).

14. I find that the compensation awarded under other heads is just and reasonable.

15. In the result, the petitioner is entitled for an enhanced amount of 1,00,060/- (Rupees one lakh MACA NO. 425 OF 2013 :10: and sixty only) [13,000 + 900+ 16,000+

14,000+56,160]. The 3rd respondent insurance company shall deposit the amount with 8% interest per annum from the date of petition till realisation with proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this judgment. The pay and recovery ordered by the Tribunal as against the 1st respondent is not disturbed.

Appeal is disposed of. Sd/- MURALI PURUSHOTHAMAN JUDGE SB

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com