Premkumar vs Anoop and Others

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SooperKanoon Citation : sooperkanoon.com/1354156

Court : Kerala

Decided On : Jul-05-2023

Judge : Honourable Mr.Justice Basant Balaji

Appeal No. : MACA/152/2011

Appellant : Premkumar

Respondent : Anoop and Others

Judgement :

M.A.C.A. NO.152 OF 2011 : 1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945 MACA NO. 152 OF 2011 AGAINST THE ORDER/JUDGMENT OPMV 677/2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM APPELLANT/PETITIONER: PREMKUMAR S/O.BALAKRISHNAN NAIR,KIDANGAPPILLY HOUSE,, CHEMBOOTHARA, THRISSUR DISTRICT,. BY ADV SRI.SHEJI P.ABRAHAM RESPONDENTS: 1 ANOOP S/O CHANDRAN KAIPPALLY HOUSE,, ROSE BAZAR, VIYYUR, THRISSUR DISTRICT-680515. 2 P.B.CHANDRAN S/O.BALAN, PUZHAKKAL HOUSE,, VALAPPAYA, THRISSUR- 680509.

3 CHOOLAMANDALAM INSURANCE COMPANY LTD NSC ROSE ROAD, CHENNAI-600001,, POLICY NO.VCV.00017480- 000-01 VALID FROM, 17/07/2005 TO 16/7/2006. BY ADVS. SRI.P.JACOB MATHEW SRI.MATHEWS JACOB SR. MATHEWS JACOB SR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 05.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: M.A.C.A. NO.152 OF 2011 : 2:

JUDGMENT

(Dated this the 5th day of July 2023) The petitioner, being dissatisfied with the award in O.P (MV) No.677/2006 on the files of the Motor Accidents Claims Tribunal, Ottapalam, has filed this appeal, claiming enhancement of compensation.

2. On 22.03.2006, the appellant, while traveling in a goods auto

rikshaw bearing registration No.KL 8 X 8953 with his goods through Shornur - Thrissur road, and when the auto rikshaw reached the place near Mythri Nagar, the autorickshaw hit another parked vehicle. The autorickshaw was driven by the 1st respondent in a rash and negligent manner, and it was owned by the 2nd respondent and insured by the 3rd respondent. Due to the accident, the appellant sustained serious injuries and was admitted as an inpatient in Aswini Hospital, Thrissur. The

appellant claimed Rs.9,23,500/- (limited to Rs.6,00,000/-) as compensation. The accident happened due to the negligence of the 1 st respondent, driver of the goods autorickshaw, and therefore the 2nd respondent, the owner of the vehicle, is liable to pay the amount, and the 3rd respondent being the insurer, is liable to indemnify the 2 nd respondent.

3. Respondent Nos. 1 and 2 remained exparte. The 3 rd respondent

M.A.C.A. NO.152 OF 2011 : 3: alone filed a written statement admitting the insurance policy of the offending vehicle. The age, income, occupation, and quantum of the compensation claimed were disputed. The Tribunal relying on the oral evidence of PW1 and PW2 and documents Exts.A1 to A8 and B1, awarded a total compensation of Rs. 2,30,200/- with interest at the rate of 7 % per annum from the date of petition till realisation from respondents 1 and 2 jointly and severally.

4. The Tribunal has held in the said judgment that, since the

petitioner was traveling in a goods autorickshaw along with the driver in the driver seat, there was no insurance coverage for the passenger traveling in a goods autorickshaw and there is a violation of policy condition. Therefore, the insurer is not liable to indemnify the owner of the vehicle. On said finding, the Tribunal exonerated the insurer from paying the amount.

5. Heard Sri.Sheji P.Abraham, learned counsel appearing for the appellant, and Sri.P.Jacob Mathew, learned counsel appearing for the 3rd respondent.

6. The learned counsel for the appellant argued that the finding of the Tribunal exonerating the insurer/ 3rd respondent is not correct. He has taken a contention in the Tribunal itself that the petitioner was

M.A.C.A. NO.152 OF 2011 : 4: traveling along with the goods, and so, he will come under Section 147(1) b(1) of the MV Act. He also relied on judgment of this Court in United India Insurance Co. Ltd. v. Manoj [(2011) 1 KLT 502] to contend the proposition that the owner of goods in a goods autorickshaw sharing the seat with the driver and even though there is violation of policy conditions, the Insurance company cannot be exonerated and what the Tribunal can do is to direct the insurance company to pay the amount and recover it from the registered owner, after making the payment of the claimant. The second contention raised is regarding the inadequacy of the compensation awarded. According to the learned counsel for the appellant, the appellant was aged 40 years at the time of the accident and was a welder by profession, earning an income of Rs.6,000/- per month. But the Tribunal took the monthly income at Rs.3,000/- per month. Relying on the decision reported in Ramachandrappa V. Manager, Royal Sundram Alliance Insurance Co. Ltd[(2011) 13 SCC 236], it was contended that the appellants monthly income should be Rs.5,500/-. The next contention raised is that, as per Ext.A7 disability certificate issued by the Doctor, the disability is 20% and the Doctor was examined as PW2; therefore, the Tribunal was not justified in reducing the percentage of disability from

M.A.C.A. NO.152 OF 2011 : 5: 20% to 15%. Due to the accident, the appellant could not do his job for six months, and therefore, he prays that loss of earnings be granted @ Rs.5,500/- for six months. He also claims enhancement of compensation towards pain and suffering and loss of amenities of life.

7. The learned Senior counsel for the 3 rd respondent submits

that the appellant was traveling in a goods autorickshaw along with the driver of the goods autorickshaw. The number of persons who can travel inside the autorickshaw is one for a goods autorickshaw. Therefore, the appellant is not a passenger in the goods autorickshaw, and he is not entitled to claim compensation from the insurance company. The same being a policy condition violation, he can only recover the amounts from the registered owner and driver of the vehicle. As far as the 1st contention raised by the counsel for the appellant is regarding the right of recovery from the insurance company and giving a right to the company to recover it from the registered owner. The Division Bench of this Court in United India Insurance Co. Ltd.(supra) has already held so. Therefore, the 1 st contention is answered in favour of the appellant, and the finding entered by the Tribunal that the appellant can recover the amounts only from respondents 1 and 2 is modified and hold that the 3rd respondent shall

M.A.C.A. NO.152 OF 2011 : 6: pay the amounts to the appellant and recover the same from respondents 1 and 2.

7. Regarding the enhancement of compensation, the appellants

income is taken as Rs.5,500/-, in view of the dictum laid down in Ramachandrappa (supra). The percentage of disability is taken as 20% since the doctor who has issued the certificate has been examined and proved adequately before the Tribunal. Therefore, the Tribunal ought to have accepted the percentage of disability as 20. Thus the loss of permanent disability can be calculated as

Rs.5,500x12x15x20/100 =Rs.1,98,000/-.

8. As far as pain and suffering are considered, it can be seen

that the injuries noted are lacerated wound from anterior corner of right eye, through the root of nose, lacerated wound right side of the nose 5X1 c.m, lacerated wound 7X1 cm occipital area upper, haematoma over lumber area of spine and investigation also showed frontal ribs right dislocation fracture L3,L4 vertebra and fracture of nasal bone and cerebral oedema. Considering the injuries sustained mentioned above, I am inclined to award an enhancement of the amount under the head pain and suffering than what is awarded by the Tribunal. Though the appellant claimed Rs.1,00,000/-, the Tribunal has

M.A.C.A. NO.152 OF 2011 : 7: awarded Rs.25,000/-. Taking note of the injuries mentioned above, a further sum of Rs.25,000/- is awarded under this head.

9. For loss of amenities in convenience and life, against the

claim of Rs.40,000/- only Rs.10,000/- is awarded. Since there are vertebra fractures and severe injuries in the ribs, there may be a loss of amenities for the appellant. Hence, a further sum of Rs.10,000/- is awarded to the said head.

10. The appellant claimed loss of earnings for six months. I am

of the view that loss of earnings for 3 months can be granted. Thus, the compensation under loss of earnings, with the new income, would be Rs.5,500 X 3= Rs.16,500/-

11. Accordingly, the following enhancements are made to the award passed by the Tribunal:

> Sl. No The compensation claimed Amt. Awarded by Amt. Awarded by under different heads Tribunal (Rs.) this Court (Rs.) 1 Compensation for continuing 81,000/- 1,98,000/- or permanent disability 2 Pain and suffering 25,000/- 50,000/- 3 Loss of amenities and 10,000/- 20,000/- conveniences etc. 4 Loss of earnings -- 16,500/- Total 1,16,000/-

2,84,500/- Amount enhanced = 2,84,500 - 1,16,000 = Rs.1,68,500/-

M.A.C.A. NO.152 OF 2011 : 8: In the result, the appeal is allowed as follows:

(i) The finding entered by the Tribunal that, respondents 1

and 2 are jointly and severally liable to pay compensation to the appellant is modified and it is held that, even though the liability is jointly and severally on respondents 1 and 2, the Insurance company- 3rd respondent shall pay the amount to the appellant and recover the same from respondents 1 and 2.

(ii) The appellants are entitled for a sum of Rs.1,68,500/-

(Rupees one lakh sixty eight thousand and five hundred only) as enhanced compensation with interest at the rate of 7% per annum from the date of petition till realisation. The appeal is filed with a delay of 70 days. Hence the enhanced compensation awarded by this Court will not carry interest for 70 days, as per the order dated 17.1.2022.

(iii) The apportionment of compensation fixed by the Tribunal

is upheld. All other findings entered by the Tribunal stand confirmed. If any amounts have already been paid, the same shall be granted set off. The claimants shall produce the details of the Bank account before the Insurance Company/Tribunal within one month from the date of receipt of a certified copy of this judgment, and amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not furnished within the

M.A.C.A. NO.152 OF 2011 : 9: time stipulated, it is made clear that no interest shall run on the enhanced amount after the period stipulated by this Court.

(iv) If the enhanced amount is higher than the amount claimed in the original petition, the appellant will have to pay balance court fee. Sd/- BASANT BALAJI, JUDGE AP