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Reghu vs Aji Kumar

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Court : Kerala

Decided On : Sep-30-2023

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

Appeal No. : MACA/1230/2013

Appellant : REGHU

Respondent : Aji Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. SATURDAY, THE 30TH DAY OF SEPTEMBER 2023 / 8TH ASWINA, 1945 AGAINST THE AWARD IN OP(MV)NO.1523/2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,PATHANAMTHITTA DATED 06.04.2013 APPELLANT/PETITIONER: REGHU, S/O.RAJAPPAN ACHARY, MANNANCHERI HOUSE, VENGAL, ALAMTHURUTHY P.O., THIRUVALLA. BY ADVS. SHINDO VARGHESE V.V.SHAJI SUSANTH SHAJI RESPONDENTS/RESPONDENTS: 1 AJI KUMAR, S/O.V.G.VIJAYAN PILLAI, EZHIKKATTU PUTHEN PURAYIL HOUSE, CHANAKARY P.O., THIRUVALLA, PIN 689101. 2 SHYLAJAKUMARI, VRINDAVANAM, PERUMTHURUTH, MUHAMMA P.O., ALAPPUZHA DISTRICT, PIN 688525. 3 NATIONAL INSURANCE CO.LTD. NELLAI

COMPLEX, ALAPPUZHA-688001.

ADV.SRI.E.M.JOSEPH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 30.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ZIYAD RAHMAN, A.A, J M.A.C.A No. 1230 of 2013 th Dated this the 30 day of September, 2023

JUDGMENT

The appellant is the petitioner in OP(MV)No.1523/2006 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta.

2. The said claim petition was submitted by the

appellant seeking compensation for the injuries sustained by him in a motor accident that occurred on 21.05.2006 when the scooter driven by the appellant was hit by a motorcycle bearing registration No.KL-04/K9232 ridden by the first respondent. The said motorcycle was owned by the second respondent herein and was insured with the third respondent. Consequent to the accident, he sustained injuries that resulted in physical disability. According to the appellant, he was aged 40 years at the time of the accident and was working as a mason with a monthly income of Rs.7000/-. The claim petition was filed in such circumstances, and the compensation sought by the appellant was Rs.5,00,000/- (Rupees five lakhs only).

3. The first and second respondent remained exparte.

The third respondent-Insurance Company has filed a written statement admitting the coverage of the policy of motorcycle. However, they disputed the liability on various grounds. The Insurance Company also disputed the negligence and the quantum of compensation claimed.

4. The evidence in this case consists of Exts.A1 to A11 from the side of the appellant, and no evidence was adduced from the side of the respondent.

5. After appreciating the materials placed on record, the Tribunal came to the finding that, even though the accident occurred due to negligence mainly on the

part of the

first respondent, who was riding the motorcycle, 10% contributory negligence was attributed to the appellant, on the ground that as per the medical records of the appellant, there was a smell of alcohol. The quantum of compensation was fixed as Rs.2,15,360/- and 90% of the said amount was directed to be deposited by the third respondent Insurance Company with interest @ 7.5% per annum from the date of petition till realisation with proportionate cost of Rs.4250/-. This appeal is submitted by the appellant in such circumstances challenging the finding of contributory negligence and also enhancement of the compensation,

6. Heard Adv.Sri.Susanth Shaji, learned counsel appearing for the appellant and Adv.Sri.E.M.Joseph, learned counsel appearing for the third respondent-Insurance Company,

7. The main contention put forward by the learned

counsel for the appellant is in relation to the finding of the Tribunal with regard to the contributory negligence. It was pointed out that merely because, in the medical report, there was an endorsement to the effect that there was a smell of alcohol at the time of the examination of the appellant, no contributory negligence can be attributed. After considering the materials taken on record, I find some force in the contentions put forward by the learned counsel for the appellant. The contributory negligence can be attributed only if the materials relating to the accident revealed that the appellant had contributed to the accident in any manner owing to his negligence in riding the motorcycle. The position of law

in this regard is settled by the principle laid down by this court in (New India Insurance Company Ltd. V. Pazhaniyammal and Others [2011 (3) KLT 6481] , wherein it was held that in the absence of any contra evidence, the conclusion arrived by the police has to be accepted while adjudicating the question of negligence in a proceeding under Section 166 of the Motor

Vehicles Act. In this case, it is discernible from the records that, in Ext.A7 final report, the first respondent was implicated

as the accused, and no contra evidence was adduced. In such circumstances, I am of the view that, merely because there was a smell of alcohol, the Tribunal ought not to have entered into a finding of contributory negligence on the part of the appellant. The extent of the influence of alcohol upon the appellant and the manner in which the same affected the driving of the appellant is also not evidenced by any of the

records. Therefore, I set aside the finding of contributory negligence made by the Tribunal.

8. Moving on to the quantum of compensation, one of the contentions raised by the learned counsel for the appellant is about the monthly income taken by the Tribunal, which was

Rs.4000/-. The monthly income claimed was Rs 7000/-. Even though the appellant claimed that he was working as a mason, absolutely no evidence was adduced to substantiate the same. However, even in the absence of any evidence, by following the method of computation in the light of the principles laid down in Ramachandrappa V. Manager, Royal Sundaram Alliance Insurance Co. Ltd [(2011) 13 SCC 236] and Syed Sadik V. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735] the monthly income can be reasonably fixed as Rs.5500/- as the accident was in the year 2006. Therefore, the monthly income is fixed as Rs.5500/-. It is seen from the records that the appellant sustained a disability of 25%, which was accepted by the Tribunal. Therefore, while reworking the compensation with the revised monthly income, the total amount would come to Rs.2,47,500/- (5500 x 12 x 15 x 20/100). After deducting Rs.1,80,0000/- awarded by the Tribunal under this head, the additional compensation would come to Rs.67,500/-

9. Consequent to the revision of monthly income, the appellant would be entitled to a further sum of Rs.6000/- under the head of loss of earnings. When considering the other heads, it can be seen that the amount awarded under

the head of pain and suffering was only Rs.10000/- Considering the nature of injuries suffered by the appellant and the disability that occurred from such injuries

and other relevant aspects, I am of the view that a further sum of Rs.10,000/- is to be granted to the appellant. Similarly, for the very same reasons, a further sum of Rs.15,000/- is to be granted under the head of loss of amenities, as the amount already awarded by the Tribunal is Rs.5000/- Thus, the total additional compensation receivable by the appellant is determined as Rs.98,500/-.

6. In the result, this appeal is allowed, and the award

dated 06.04.2013 in OP(MV)No.1523/2006 on the files of MACT, Pathanamthitta is modified by granting an additional compensation of Rs.98,500/- (Rupees ninety-eight thousand and five hundred only) and the said amount shall be deposited by the third respondent-Insurance Company with interest at the rate as ordered by the Tribunal, within a period of three months from the date of receipt of a copy of this judgment.

The appeal is disposed of accordingly. sd/- ZIYAD RAHMAN, A.A, JUDGE R.AV

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