

K.S Haridasan vs Devan

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Court : Kerala

Decided On : Mar-31-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : MACA/1512/2013

Appellant : K.S Haridasan

Respondent : DEVAN

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
FRIDAY, THE 31ST DAY OF MARCH 2023 / 10TH CHAITHRA, 1945
AGAINST THE AWARD IN O.P(M.V) NO.560/2011 OF MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KOTTAYAM
APPELLANT/PETITIONER: K.S HARIDASAN NAIR, ARCHANA
NIAVAS, S.N PURAM P.O., KOOROPPADA, KOTTAYAM. PIN-686 502.
BY ADVS. SRI.M.P.MADHAVANKUTTY SRI.GOKUL DAS V.V.H.
SRI.S.RANJIT KOTTAYAM RESPONDENTS/RESPONDENTS: 1
DEVAN V, ASWATHY BHAVAN, KOTHALA P.O., KOOROPPADA,
KOTTAYAM-686 502. 2 N.RAJAN, NJALIMAKKAL HOUSE, NEAR 12TH
MILE, KOTHALA P.O., KOOROPPADA, KOTTAYAM-686 502. 3 THE

BHARATI AXA GENERAL INSURANCE CO. LTD, REPRESENTED BY ITS MANAGER -LEGAL, 5TH AND 6TH FLOOR, MODAYIL CENTRE POINT, PALLIMUKKU, M.G.ROAD, KOCHI-682 035. BY ADV. K.S.SANTHI THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 31st day of March, 2023.

The appeal on hand is directed against an award passed by Motor Accidents Claims Tribunal, Kottayam (for short, the Tribunal) on 09.04.2013 in O.P (M.V) No.560 of 2011. The appellant is the petitioner before the Tribunal. According to the learned counsel, the Tribunal failed to award just and reasonable compensation in favour of the appellant. According to the learned counsel, the claim of the appellant was for a total sum of `2,59,200/- but the Tribunal awarded only `1,13,730/- as compensation and therefore, the appellant is aggrieved. Thus, modification of compensation was sought.

2. For the sake of convenience, the parties to this appeal will hereinafter be referred to as the petitioner and respondents 1 to 3 in accordance with their status in the Original Petition.

3. The facts of the case are relevant to be discussed in brief hereunder:

The motor accident in question was occurred at about 4 p.m on 13.02.2010. The petitioner was riding a Motorcycle bearing Registration No.KL-05/Y-2641 from west to east through the northern side of NH 220. When reached near 12 th Mile, Kothala, a Tata Ace Pickup Van bearing Registration No.KL-5/AA-2656 hit on the Motorcycle due to the rash and negligent driving by its driver and thereby, the petitioner sustained serious injuries. He was rushed to Matha Hospital, Thellakom and was

treated there as inpatient. The treatment was also continued at Medical Trust Hospital, Ernakulam. Alleging that the motor accident in question was occurred due to the rash and negligent driving of the Pickup Van by its Driver and claiming `2,59,200/- as compensation, the Original Petition on hand was moved by the petitioner before the Tribunal.

4. The owner, the driver and the insurer of the Pickup Van

were arrayed as respondents 1 to 3 in the Original Petition. 1 st and 2nd respondents though served with notice did not turn up to contest the Original Petition and therefore, declared exparte. The 3rd

respondent has filed written statement admitting insurance coverage for the Tata Ace Pickup Van bearing Registration No.KL- 5/AA-2656 as on date of accident but contended that the motor accident in question was occurred due to the sole negligence of the petitioner and not due to negligence of the 2nd respondent. The sum claimed as compensation is also disputed for its exorbitant nature. The age, occupation, monthly income, nature of injuries and disability were also disputed.

5. Before the Tribunal, petitioner marked Exts.A1 to A9.

On the side of the respondent, one witness was examined as RW1, who is none other than the Doctor who had treated the petitioner. The Tribunal found on the basis of the evidence on record that the motor accident in question was occurred due to the rash and negligent driving of the Pickup Van bearing Registration No.KL-5/AA-2656 by its driver, who was the 2nd respondent in the Original Petition.

6. The Tribunal also found that the petitioner had sustained serious injuries in the motor accident and therefore, is

entitled to get compensation from respondents 1 to 3. The Tribunal arrived at `1,13,730/- as the quantum of compensation payable to the

petitioner and directed the 3rd respondent to deposit the same with interest at the rate of 8.5% per annum from the date of filing of the Original Petition till the date of deposit alongwith proportionate costs.

7. The main contention raised by the learned counsel for

the petitioner was that he had produced the licence issued in his favour from Kooroppada Grama Panchayath for conducting a Grocery shop and the document showing renewal of the same, alongwith a petition filed as I.A No.4746/2012 for receiving those. The Tribunal has allowed the application but failed to mark those in evidence. According to him, therefore, his occupation stands not proved and accordingly, the monthly income happened to be fixed as `4,500/- on a notional basis.

8. According to him, he had averred in the Original Petition that he was running a Provision Store at the relevant time of motor accident and was earning `14,000/- monthly. According to him, to

establish his occupation, the licence issued in his favour from Kooroppada Grama Panchayath and the document evidencing its renewal were produced by him. The Tribunal though received, failed to mark those and thereby those did not form part of the record of evidence. The learned counsel has produced the copies of the licence issued from Kooroppada Grama Panchayath and also the document evidencing renewal of the same, before this Court and seeks to mark those in additional evidence.

9. Since a claim was raised by the petitioner that he was

permanently disabled on account of the injuries sustained in the motor accident, this Court has referred the petitioner before the Medical Board associated with Government Medical College Hospital, Kottayam. The petitioner was examined by the Medical Board and his permanent disability was certified as 8% in the certificate issued. The reasons for

assessing the permanent disability was also stated there as loss of knee cap (patella), wasting of left quadriceps muscles by 4 cms and reduction in power of extension of left knee. The medical documents were marked in

evidence as Exts.A5, A6 and A9. A9 is nothing but the Wound Certificate cum Discharge Certificate issued from Medical Trust Hospital, Ernakulam and Discharge Summaries issued from the very same Hospital. The nature of injuries and the treatment given to the petitioner were well reported in those documents.

10. From Exts.A5 and A6, it is found that the petitioner had

sustained Type III A Open comminuted fracture of patella with marginal fracture of lateral femoral condyle with fragments of bone exposed and a lacerated wound on left forearm. Wound debridement of left knee and forearm were done. Total patellectomy and ex-tensor mechanism repair were also done at Medical Trust Hospital, Ernakulam. He was treated as inpatient from 13.02.2010 till 23.02.2010. At the time of discharge, X-ray was taken, where his condition was reported satisfactory. Cylindrical cast was applied on left leg and thus he was advised non weight bearing and to review after four weeks in the Department of Physiotherapy.

11. He was a resident of Kooroppada, Kottayam. The primary treatment was at Matha Hospital, Thellakom and it was

continued at Medical Trust Hospital, Ernakulam. Therefore, huge amount must have been spent by him on transportation. The Tribunal has awarded only `2,500/- as compensation under the said head and it being insufficient, this Court awards `10,000/-. Therefore, the petitioner will get `7,500/- as additional compensation. As compensation towards extra nourishment, `1,000/- stands awarded by the Tribunal being low, this Court awards `3,000/- more. The monthly income of the petitioner was fixed by the Tribunal as `4,500/-. The fixation was on a notional basis, for failure of the petitioner to produce authentic documents in proof of his

occupation as well as monthly income. A provision Store was claimed to be run by him and documents were also produced to substantiate. But, those were not marked in evidence. Those being relevant for fixing the monthly income of the petitioner are marked in additional evidence as Exts.A10 and A11. It is found from those that the licence was originally issued to the petitioner for the period 2007-08 and on expiry of it, the petitioner got it renewed. In that scenario, `8,000/- is fixed as his monthly income.

12. In view of the nature of injuries sustained and the

treatment availed, this Court finds it reasonable to take eight months as the period for which the petitioner was unable to attend the shop and thereby suffered loss of income. True that, the shop could have been run through an agent, but, he needs to be paid. Thus, `64,000/- ( $`8,000/- \times 8$) is arrived at as the compensation for loss of earning. `9,000/- stands awarded by the Tribunal when deducted therefrom, the petitioner will get `55,000/- as additional compensation under that head. As compensation towards damages to clothing, `500/- more is awarded. As compensation towards bystander expenses, `2,600/- stands awarded by the Tribunal being too low, this Court awards `3,400/- more as additional compensation. As compensation towards pain and suffering, `22,000/- stands awarded by the Tribunal being inadequate and disproportionate to the sufferings, this Court awards `18,000/- more as additional compensation. As compensation towards loss of amenities and enjoyments in life, this Court awards `5,000/- more as additional compensation.

13. A certificate assessing permanent disability of the

petitioner by the Medical Board is appended to the appeal on hand and it is marked in evidence as Ext.C1. The Medical Board has assessed 8% as the permanent disability of the petitioner on the basis of the injuries

sustained by him in the motor accident. The complaints made by the petitioner before the Medical Board and the reasons for arriving at 8% as his disability were described in Ext.C1. His complaints include difficulty in speedy walking and a feeling of weakness in left knee while lifting heavy weights. The petitioner being the Proprietor of Provision Stores, cannot avoid walking and standing for a long time. He has also to move from places to places for selecting things suitable for the shop. True that these things can be done through an agent, but only on payment. The functioning of the shop may not be profitable as was, when its affairs were under his own control and management.

14. It has been held by the Apex Court in *Sidram V. Divisional Manager, United India Insurance Company Ltd* [2022 KHC 7206] that the Tribunal has to find out from the evidence on

record, the nature of injuries and the kind of permanent disability assessed for him, with reference to his occupation. Discussion is already had with reference to the difficulties liable to be faced by the petitioner in attending the Provision Store as its Proprietor with the physical disability stands certified by the Medical Board. Therefore, 25% is added to the monthly income fixed, in consideration of loss of future prospects of the petitioner. The multiplier was adopted by the Tribunal as 13 and it being correct is maintained. Thus in the calculation, ₹1,24,800/- [(₹8,000+25%) x 12x13x8/100] is arrived at as the compensation payable to the petitioner for his disability.

15. In the above manner of re-assessment, the petitioner will

get ₹2,17,200/- (Rupees Two Lakh Seventeen Thousand Two Hundred only) as total additional compensation, which will also carry interest at the rate of 7.5% per annum from the date of filing of the Original Petition till the date of realisation. This Court has already held vide order passed on 15.02.2022 that the petitioner is disentitled for interest for the

compensation arrived at from 18.07.2013 till the date on which the respondents were served with

notice in the appeal on hand, for his failure to take steps in time. Therefore, the 3rd respondent is exonerated from paying interest for the period stands exempted as above.

16. The 3rd respondent shall pay the additional

compensation and interest payable on it within a period of two months from the date on which a certified copy of this judgment is received, in accordance with the directions issued by this Court in Circular No.03/2019 dated 06.09.2019. M.A.C.A stands allowed accordingly. Sd/- MARY JOSEPH JUDGE JJ

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