

Jineesh vs the Commissioner

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Court : Kerala

Decided On : Nov-21-2023

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

Appeal No. : MACA/1215/2014

Appellant : Jineesh

Respondent : The Commissioner

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
TUESDAY, THE 21ST DAY OF NOVEMBER 2023/30TH KARTHIKA,
1945 MACA NO. 1214 OF 2014 OPMV 1595/2009 OF ADDITIONAL
MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
APPELLANT/PETITIONER: SHARON ANTONY PODUTHAS, AGED 30
YEARS S/O. JOSEPH PODUTHAN, THATHANKERY HOUSE, JETTY
BHAGOM, MANJANAKKAD, NARAKKAL.P.O., PIN-682505,
ERNAKULAM DISTRICT. BY ADVS. SRI.R.SUDHISH SMT.M.MANJU
RESPONDENTS/RESPONDENTS:

1 THE COMMISSIONER, COMMISSIONER OF RURAL DEVELOPMENT, L.M.S.COMPOUND, VIKAS BHAVAN, THIRUVANANTHAPURAM-695001. 2 K.T SREERAJ, S/O. THILAKAN, KAITHAVALAPPIL HOUSE, NEAR A.T.H. BAR HOTEL, NAYARAMBALAM, NORTH PARAVUR-682509. 3 MS. UNITED INDIA INSURANCE COMPANY LTD. MUNICIPAL BUILDING, MAIN ROAD, NORTH PARAVUR- 682509. 4 THE NEW INDIA ASSURANCE COMPANY LTD. DIVISIONAL OFFICE, KOTTAKKAL ARYA VYDYA SALA BUILDING, M.G.ROAD, ERNAKULAM-682011. BY ADVS. SRI.JOHN JOSEPH VETIKAD SMT.D.GEETHA SRI.C.JOSEPH JOHNY SRI.P.B.KRISHNAN SRI.P.M.NEELAKANDAN SRI.S.NITHIN ANCHAL SRI.RAJESH THOMAS SRI.SABU GEORGE SMT.K.SHERIN MOHAN SRI.P.B.SUBRAMANYAN SRI. JACOB E SIMON, PUBLIC PROSECUTOR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 21.11.2023, ALONG WITH MACA.1215/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TUESDAY,THE 21ST DAY OF NOVEMBER 2023/30TH KARTHIKA, 1945 MACA NO. 1215 OF 2014 OPMV 1606/2009 OF ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM APPELLANT/PETITIONER: JINEESH, AGED 34 YEARS S/O.BALAN, NEDUMTHARA HOUSE, EAST OF VADAPPALLY, NAYARAMBALAM, ERNAKULAM DISTRICT. BY ADVS. SRI.R.SUDHISH SMT.M.MANJU RESPONDENTS/RESPONDENTS:

1 THE COMMISSIONER, COMMISSIONER OF RURAL DEVELOPMENT, L.M.S.COMPOUND, VIKAS BHAVAN, THIRUVANANTHAPURAM. 2 K.T.SREERAJ, S/O.THILAKAN, KAITHAVALAPPIL HOUSE, NEAR A.T.H. BAR HOTEL,

NAYARAMBALAM, NORTH PARAVUR. 3 MS.UNITED INDIA INSURANCE COMPANY LTD. MUNICIPAL BUILDING, MAIN ROAD, NORTH PARAVUR. 4 THE NEW INDIA ASSURANCE COMPANY LTD. DIVISIONAL OFFICE, KOTTAKKAL ARYA VYDYA SALA BUILDING, M.G.ROAD, ERNAKULAM. BY ADVS. SRI.JOHN JOSEPH VETTIKAD SMT.D.GEETHA SRI.C.JOSEPH JOHNY SRI.P.B.KRISHNAN, SRI.P.M.NEELAKANDAN SRI.S.NITHIN ANCHAL, SRI.RAJESH THOMAS SRI.SABU GEORGE, SMT.K.SHERIN MOHAN SRI.P.B.SUBRAMANYAN SRI. JACOB E SIMON, PUBLIC PROSECUTOR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP

FOR ADMISSION ON 21.11.2023, ALONG WITH MACA.1214/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3 :

JUDGMENT

Both these appeals arose from the common award dated 15.10.2012 in OP(MV) Nos.1606/2009 and 1595/2009 passed by the Additional Motor Accidents Claims Tribunal, Ernakulam. M.A.C.A. No.1215/2014 is filed challenging the award passed in OP(MV) No.1606/2009 by the claimant, whereas M.A.C.A .No.1214/2014 is filed by the claimant in challenging OP(MV) No.1595/2009.

2. The accident occurred when the motorcycle ridden by

the appellant in M.A.C.A. No.1214/2014 (claimant in OP(MV) No.1595/2009) along with the appellant in M.A.C.A. No.1215/2014 (petitioner in OP(MV) No.1606/2009) as a pillion rider, collided with a jeep bearing registration No.KL-01-7541 driven by the 2nd respondent in a rash and negligent manner. The said vehicle was owned by the 1 st respondent and was insured with the 3rd respondent. The 4th respondent was the insurer of the motorcycle involved in the accident. It was contended by the claimants that the accident occurred due to the negligence on the part of the 2nd respondent, and they sought compensation for the :4 : injuries sustained to them.

3. The 1st respondent filed a written statement denying

the allegations and contending that the accident occurred due to the negligence on the part of the rider of the motorcycle. The 3rd respondent filed written statements in both cases admitting the coverage of policy in respect of the jeep. However, they denied the negligence and also disputed the quantum of compensation. The 4th respondent filed a written statement admitting the coverage of the insurance policy for the motorcycle but disputing the liability on the ground that the accident occurred due to the negligence of the driver of the jeep.

4. The evidence in these claim petitions consists of Exts.A1 to A11 from the side of the claimants. From the side of the respondents, Ext.B1 was marked.

5. After the trial, the tribunal came to the conclusion that

the claimants could not prove that the accident occurred due to negligence on the part of the driver of the lorry and accordingly, OP(MV) No.1595/2009 filed by the rider of the motorcycle was dismissed. In OP(MV) No.1606/2009, even though the tribunal quantified the compensation receivable by the claimant therein as :5 : Rs.55,100/-, as it was found that the accident occurred due to the rider of the motorcycle, the said petition was also dismissed on the ground that the driver and owner of the said motorcycle were not impleaded in the party array. These awards are under challenge in these appeals.

6. Heard Smt. Manju M., the learned counsel appearing

for the appellants in both cases, Sri. Jacob E Simon, the learned Government Pleader appearing for the 1st respondent, Sri. P.B. Krishnan, the learned counsel appearing for the 2nd respondent, Sri. Sherin Mohan, the learned counsel appearing for the 3rd respondent- insurance company and Sri. John Joseph Vettikad, the learned counsel appearing for the 4th respondent.

7. The main contention in this case relates to negligence.

The tribunal found negligence on the part of the rider of the motorcycle by placing reliance upon Ext.B1 scene mahazar. However, the crucial aspect to be noticed is

that the Police, after conducting the investigation, registered F.I.R. against the 2nd respondent. After completing the investigation, they filed Ext.A5 charge sheet against the 2nd respondent. The position of law in this regard is well settled by the principles laid down by this Court :6 : in *New India Assurance Co.Ltd v. Pazhaniammal* [2011 (3) KLT 648], wherein it was held that, in the absence of any contra evidence, the conclusions arrived at by the Police can be accepted for determining the question of negligence. In this case, as observed above, even though Ext.A5 final report submitted by the Police was against the 2nd respondent, no contra evidence has been adduced by the respondent. The tribunal merely relied on the scene mahazar and arrived at the conclusion as to the negligence on the part of the rider of the motorcycle. As far as the scene mahazar is concerned, the same cannot be treated as a crucial document based on which the decision on the question of negligence can be taken, as the same was prepared by the Police after the accident. Not much evidentiary value can be given to the said document, in the absence of examination of persons who prepared such document and whose instance the same was prepared. In *Jiju Kuruvila and Others v. Kunjijumma Mohan and Others* (2013 (3) KLT 261), it was observed that, mere position of the vehicles after accident as shown in the scene mahazer cannot give substantial proof as to the rash and negligent driving on the part of one or other. Thus, in the light of :7 : the settled position of law as per *Jiju Kurivilas* case (supra) and *Pazhaniammals* case (supra) I am of the view that, as there is no contra evidence adduced, the finding of the tribunal in this regard is liable to be set aside by holding that the accident occurred solely due to the negligence of the driver of the jeep. As the 3rd respondent insurance company admits the coverage of policy, they are liable to pay the compensation to the petitioners in both the claim petitions referred to above.

8. Now, when coming to the quantum of compensation, it

can be seen that as far as the award, which is the subject matter of M.A.C.A. No.1215/2014, is concerned, the compensation is already quantified. The tribunal has fixed the total compensation as Rs.55,100/-. However, the tribunal dismissed the claim petition on the ground that the rider and the owner of the motorcycle upon whom the liability was fixed by the tribunal were not impleaded as parties.

Now that I have already held that the accident occurred due to negligence on the part of the 2nd respondent, the amount of compensation determined by the tribunal can be directed to be deposited by the 3rd respondent, the insurer of the said vehicle. As far as the compensation claimed in :8 : OP(MV) No.1595/2009 is concerned, the quantification of the amount was not done by the tribunal. However, considering the fact that this is a claim petition submitted in the year 2009, I do not propose to remand the matter back to the tribunal for the said purpose alone, taking note of the fact that it would further delay the process of quantification of the compensation. Therefore, that exercise can be done in this appeal itself.

9. The claimant in OP(MV) No.1595/2009 claimed to be

a mason with a monthly income of Rs.7,500/- per month. However, no evidence has been adduced to substantiate the same. In such circumstances, adopting the method of computation evolved from the principles laid down by Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd [(2011) 13 SCC 236] and Syed Sadiq v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735], the monthly income of the claimant in this case can be reasonably fixed as Rs.6,500/- as the accident occurred in the year 2008. The said amount can have relevance only in respect of the compensation under the head of loss of earnings. Considering the nature of injuries sustained in the accident and :9 : the inpatient treatment he had undergone, I am of the view that he must have been prevented from pursuing his employment at least for a period of three months. In this regard, it is to be noted that, as is evidenced from the award, the petitioner in OP(MV) No.1595/2009 suffered minimal compression wedge fracture T12, L1, L2, pain lower back, fracture spine. In such circumstances, the compensation under the head of loss of earnings would come to Rs.19,500/- (6500x3). In the light of the observations, the compensation awarded in the manner as follows:

Loss of earning

19,5

In such circumstances, both these appeals are allowed with the following findings:

(1) The finding of the tribunal, holding the rider of the motorcycle, the petitioner in OP(MV) No.1595/2009, responsible for the accident, is hereby set aside.

(2) It is held that the accident occurred solely due to : 10 : the negligence on the part of the 2 nd respondent and the 1st respondent being the owner and the 3 rd respondent being the insurer are also liable for the

accident. Thus respondent Nos.1 to 3 are held

jointly and severally liable to pay the compensation. Since the coverage of policy is admitted by the 3rd respondent, they shall deposit the amount of compensation awarded in both these claim petitions.

(3) In OP(MV) No.1595/2009, the amount of

compensation is fixed as Rs.52,800/- and the said amount shall be deposited by the 3 rd respondent along with interest at the rate of 8% per annum from the date of petition till realisation with proportionate costs.

(4) In OP(MV) No.1606/2009 the compensation of

Rs.55,100/- awarded by the tribunal is confirmed and the 3rd respondent shall deposit the said amount along with interest at the rate of 8% per annum from the date of petition till realisation. However, it is clarified that, as these appeals were filed along with petitions to condone the delay of the 404 days, the respective appellants shall not be entitled to interest for the said period for the amounts awarded. Sd/- ZIYAD RAHMAN A.A. JUDGE ncd

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