

Jinesh vs Shine

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Court : Kerala

Decided On : Feb-15-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : MACA/2076/2014

Appellant : Jinesh

Respondent : SHINE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
WEDNESDAY, THE 15TH DAY OF FEBRUARY 2023 / 26TH MAGHA,
1944 MACA NO. 2076 OF 2014 AGAINST THE AWARD DATED
21.05.2014 IN O.P(M.V) NO.1591/2011 OF MOTOR ACCIDENTS
CLAIMS TRIBUNAL, KOTTAYAM APPELLANT/PETITIONER: JINESH,
AGED 29 YEARS, PUTHENPARAMBIL HOUSE,
THIRUVANCHOOR.P.O, NARIMATTOM BHAGOM, MANARCADU
VILLAGE. BY ADVS.SRI.PHILIP T.VARGHESE SMT.ACHU SUBHA
ABRAHAM SRI.THOMAS T.VARGHESE
RESPONDENTS/RESPONDENTS: 1 SHINE, KODITHANATH,
S.H.MOUNT.P.O, VATTAMOODU KADATH, KOTTAYAM-686 001. 2

DIVAKARAN.K.N, KARIMPANAPARAMBIL, PUNNATHURA.P.O,
AYARKUNNAM-686 583. 3 THE NATIONAL INSURANCE CO.LTD.,
KOTTAYAM-686 001. R3 BY ADV. SRI.A.A.MOHAMMED NAZIR,
STANDING COUNSEL THIS MOTOR ACCIDENT CLAIMS APPEAL
HAVING BEEN FINALLY HEARD ON 15.02.2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 15th day of February, 2023 The appeal on hand is filed by the appellant who is the petitioner before Motor Accidents Claims Tribunal, Kottayam (for short 'the Tribunal'). The impugned award was passed by the Tribunal on 21.05.2014 in O.P.(MV) No.1591/2011.

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

3. The contention of the learned counsel for the

petitioner was that though the petitioner had sustained severe injuries in the motor accident, the Tribunal failed to appreciate the same and to grant just and reasonable compensation under various heads. According to him, the petitioner lost sight of right eye in the motor accident and therefore was unable to attend his job for a considerable period. According to her the petitioner claimed to be driver of a Jeep belonging to a Contractor and earning `8,000/- as monthly income. But the Tribunal took only `5,000/- as the monthly income and assessed the compensation payable under loss of earning and

also permanent disability on its basis. According to her the Tribunal has gone wrong in fixing `5,000/- as the monthly income notionally. The learned counsel has also canvassed that the Tribunal is unjustified in considering only 20% as the disability, when the Medical Board has examined the petitioner and certified 34% as the disability of the petitioner. According to her, 34% certified by the Medical Board ought to have been taken by the Tribunal for assessment of compensation

for

disability. It was further contended that the petitioner was a resident of Manarcadu and treatment was availed from Medical College Hospital, Kottayam. Therefore, a higher sum ought to have been awarded by the Tribunal towards transportation expenses.

4. The learned counsel for the 3rd respondent was

contended on the contrary that the Tribunal is well justified in taking a reduced percentage of disability for assessment of compensation since it has stated reasons in the impugned award for doing so. The learned counsel has also pointed out that the Medical Board failed to certify the wholebody disability of the petitioner. The learned counsel has contended further that though petitioner claimed to be driver of a private Jeep belongs to a Contractor, he failed to establish his avocation and income by satisfactory evidence. According to him, even the driving licence possessed by the petitioner, authorising him to do the work as driver was not produced before the Tribunal. In the above circumstances that the Tribunal was constrained to fix `5,000/- as the monthly income on a notional basis. The learned counsel for the 3rd respondent sought for maintaining the compensation stands awarded by the Tribunal for the above reasons.

5. Petitioner was aged 26 years at the relevant time

when he met with the motor accident in the year 2010. At the relevant time of the accident he was also riding his motorcycle through Thiruvanchoor- Ayarkunnam road. The motorcycle was hit by another motorcycle and thus he sustained injuries. He was rushed to Medical College Hospital, Kottayam and was treated there as inpatient from 18.08.2010 to 28.08.2010. The treatment was also availed from Vasan Eye Care Centre, Kottayam.

6. In the Original Petition, a sum of `5,00,000/- was claimed as compensation. The rider, the owner and the insurer of the offending Motorcycle were arrayed as respondents 1 to 3 in the Original Petition.

7. Ist respondent had filed written statement

contending that the motor accident was occurred due to the rash and negligent riding of the motorcycle by the petitioner under the influence of alcohol and that the Motorcycle ridden by the 1st respondent was owned by the 2nd respondent and was insured with the 3rd respondent.

8. The 3rd respondent had also filed written statement

admitting insurance coverage of the Motorcycle bearing Registration No.KL-5/W-9893 as on date of the motor accident and contending that the motor accident was occurred due to the negligence of the petitioner and that the 2 nd respondent was not holding a valid and effective driving licence to ride the Motorcycle as on date of the accident. The 2 nd respondent though served with notice did not contest the Original Petition and was declared ex-parte.

9. Petitioner tendered oral evidence as PW1 and

marked Exts. A1 to A10 series and Ext.X1. On appreciation of the above evidence the Tribunal found that the motor accident was occurred due to the rash and negligent riding of the motorcycle bearing Registration No.KL-5/W 9893 by its rider, who was none otherthan the 1st respondent in the Original Petition. The Tribunal has also found that the petitioner on account of the injuries sustained in the motor accident is

entitled to get compensation from the respondents. `3,03,500/- was arrived at as the compensation payable. Since it was established by evidence that the offending vehicle was insured with the 3rd respondent, the Tribunal fixed the liability upon it to indemnify the insured. But, the authority of the 1 st respondent to ride the Motorcycle at the relevant time was not established.

10. It is contended by the learned counsel for the

petitioner that the driving licence was produced before the Tribunal after closing the evidence, but it was not permitted to be marked in evidence. In Ext.X1, the certificate assessing the disability of the petitioner, the occupation of the petitioner was

shown as driver of a JCB and not as driver of a private Jeep. Therefore, there is inconsistency in the version of the petitioner about his avocation. The motor accident being occurred in 2010, this Court fixes `7,000/- as the monthly income of the petitioner. As established from the documentary evidence on record, petitioner had sustained head injury including fracture

of right squamous temporal bone, pneumocephalus, Right traumatic optic Neuropathy in the motor accident in question. He was treated as inpatient as well as out patient. The treatment was availed from Medical College Hospital, Kottayam. In Ext.X1, the Medical Board has assessed 30% and 4% respectively as the optic and neurological disability of the petitioner. The Tribunal opted to calculate compensation on the basis of 20% disability.

11. It was reported by the Tribunal in the impugned

award about its opportunity to see the petitioner personally. In the view of the Tribunal, the petitioner had not lost his vision fully and there is absolutely nothing suggestive of the fact that loss of vision suffered by the petitioner was due to the injuries sustained by him in the motor accident in question. Moreover,

the disability was not assessed by the Medical Board on wholebody basis. For the reasons, the Tribunal opted to take 20% as the disability of the petitioner for calculation of compensation.

12. The Tribunal undoubtedly is erred in observing so.

The 1st medical document prepared immediately after the motor accident itself shows that the petitioner has loss of vision in right eye. The vision in right eye has been reported as lost fully. In the wound certificate as well as in the discharge summary, Traumatic Optic Neuropathy was reported. When such a report is there, there is no scope for doubting the cause of loss of vision for the petitioner as the injuries sustained in the motor accident. While tendering evidence as PW1, petitioner had also deposed before the Tribunal that in view of the injuries sustained in the motor accident that he had lost vision of his right eye in full. Therefore, it is found that the evidence on record was overlooked by the Tribunal.

13. The Medical Board has assessed 30% as the disability for loss of vision of one eye in full. But as rightly pointed out by the learned counsel for the 3rd respondent, the assessment was not on wholebody basis. True that the neurological disability was certified as 5% strictly on whole body basis.

14. In the above circumstances, this Court is inclined to adopt 25% as the optic disability of the petitioner. This Court also takes 8 months period for calculating compensation for loss of earning. When compensation is assessed with the modified monthly income of `7,000/- and for a period of 8 months, `56,000/- ($7,000/- \times 8$) is arrived at. `30,000/- stands awarded by the Tribunal when deducted, the petitioner will get `26,000/- ($56,000/- - 30,000/-$) as additional compensation under the head loss of earning.

15. Towards extra nourishment, `1,000/- stands awarded by the Tribunal against a claim of `2,000/- and this Court modifies it to `2,000/-. Therefore, the petitioner will get `1,000/- as additional compensation. Towards bystander expenses, this Court modifies the compensation to `5,000/- and therefore, petitioner will get `2,000/- as additional compensation.

16. Towards damages to clothing, this Court awards `500/- more. As compensation towards pain and sufferings, `30,000/- stands awarded being inadequate, this Court awards

`5,000/- more. Towards loss of amenities and enjoyments in life also, `5,000/- more is awarded. Compensation for disability when re-calculated on the basis of the modified monthly income and the percentage of disability, `3,57,000/- ( $7,000/- \times 12 \times 17 \times 25/100$ ) is arrived at. `2,04,000/- stands awarded by the Tribunal when deducted therefrom, the petitioner will get

`1,53,000/- ($3,57,000/- - 2,04,000/-$) as additional compensation.

17. In the above manner of re-assessment the

petitioner will get `1,92,500/- (Rupees One Lakh Ninety Two Thousand Five Hundred only) as additional compensation. The said amount will carry interest at the rate of 7.5% per annum from the date of filing of the Original petition till the

date of realisation. The fixation of liability upon the 3rd respondent being not under challenge, this Court maintains that. Therefore, the 3rd respondent is directed to pay the sum awarded now as additional compensation with interest fixed on it and the original sum stands awarded by the Tribunal as compensation with interest fixed (if not already paid) within a period of two months from the date on which a certified copy of the judgment is received, in accordance with the directions in Circular No.03/2019 issued by this Court on 06.09.2019. MACA stands allowed accordingly. Sd/- MARY JOSEPH JUDGE MJL

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