

Joseph vs Nithin K.M.

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Court : Kerala

Decided On : Sep-13-2023

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

Appeal No. : MACA/1808/2019

Appellant : Joseph

Respondent : Nithin K.M.

Advocate for Pet/Ap. : Sri. Mathew John

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 13TH DAY OF SEPTEMBER 2023 / 22ND
BHADRA, 1945 AGAINST THE AWARD DATED 21.01.2019 IN OP(MV)
824/2016 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA
APPELLANT/PETITIONER: JOSEPH S/O.ULAHANNAN, AMBATTU
HOUSE, PANACHAPPALLY KARA, KOVAPPALLY. BY ADVS.
MATHEW JOHN (K) SRI.MATHEW DEVASSI SRI.ABY J AUGUSTINE
RESPONDENTS/RESPONDENTS: 1 NITHIN K.M. S/O.MANJOJ,
KATTIPARAMBIL HOUSE, MALIANKARA.P.O., MOOTHAKUNNAM,
NORTH PARAVOOR, ERNAKULAM, PIN-683516. 2 RANE

SANKAR.T.D. THACHANGATTU HOUSE, NAYARAMBALAM.P.O., ERNAKULAM, PIN-682509 3 THE MANAGER NEW INDIA ASSURANCE CO.LTD., KANDANKULATHY TOWERS, M.G.ROAD, ERNAKULAM, PIN-682011. BY ADVS. SRI.V.S.SREEJITH SRI.GEORGE CHERIAN (SR.) SMT.K.S.SANTHI SMT.LATHA SUSAN CHERIAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant is the petitioner in O.P.(M.V.) No.824/2016 on the files of the Motor Accident Claims Tribunal, Pala.

2. The aforesaid claim petition was submitted by the

appellant seeking compensation for the injuries sustained in a motor accident that occurred on 01.06.2016 at 5.00 p.m., when the motorcycle ridden by the 1st respondent hit the appellant while he was walking through the road. The appellant was an agriculturist with a monthly income of Rs.20,000/-. Consequent to the injury sustained in the accident, he had undergone treatment in Lissy Hospital, Ernakulam, as an inpatient from 01.06.2016 to 14.06.2016 and continued the treatment as an outpatient thereafter. The claim petition was submitted in such circumstances seeking a total compensation of Rs.4,03,000/.

3. The claim was contested by the 3rd respondent Insurance

company alone by filing a written statement wherein they admitted the coverage of the policy but disputed the liability on various grounds. The quantum of compensation was also disputed.

4. From the side of the appellant, Exts.A1 to A9 were

marked, but no oral evidence was adduced. The respondents had also not adduced any evidence. After appreciating the materials placed on record, the Tribunal concluded that the accident occurred due to negligence of the rider of the

motorcycle, and being the

insurer of the said motorcycle, the 3rd respondent was held

responsible for paying the compensation. The quantum of compensation was fixed as Rs.2,76,183/- and the 3rd respondent was directed to deposit the said amount along with interest @ 9% per annum from the date of petition till realisation with proportionate cost. Being dissatisfied with the quantum of compensation, this appeal is filed.

5. Heard Sri. Mathew John, learned counsel for the appellant and Smt.Latha Susan Cherian appearing for the 3 rd respondent Insurance Company.

6. The main contention put forward by the learned counsel for the appellant is with regard to the inadequacy of compensation granted under the head of permanent disability. It was pointed out

that even though an income of Rs.20,000/- was claimed, the Tribunal had taken only Rs.9,000/- which is on the lower side. From the facts and circumstances of the case, I find some force in the contention put forward by the learned counsel for the appellant. However, to substantiate the claim of Rs.20,000/- as monthly income, there are absolutely no documents produced by the appellant. In such circumstances, the monthly income has to be fixed by following the principles laid down by the Honble Supreme Court in 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]. As per the method of calculation of monthly income going by the principles laid down by the Honble Supreme Court in the said decisions, the monthly income of the appellant can be re- fixed as Rs.10,500/-since the accident occurred in the year 2016. Even though the learned counsel for the appellant also raised a contention that the percentage of disability taken by the Tribunal is on the lower side, in the facts and circumstances of the case, I am

not inclined to accept the same. This is mainly because, even though the Annexure A8 disability certificate was relied on by the appellant, the said certificate

was issued by a private Doctor who had not treated the appellant. When taking note of the aforesaid aspect and also considering the injuries sustained by him, I am of the view that the 7% percentage of disability taken by the Tribunal appears to be reasonable. Therefore, I do not find any necessity of interference on that one. While reworking the compensation for permanent disability with the revised monthly income, the amount of compensation under this head would come to Rs.79,380/- ($10500 \times 12 \times 9 \times 7/100$). After deducting Rs.68,040 awarded by the Tribunal, the balance amount would come to Rs.11,340/-.

7. Consequent to the revision of monthly income, the

appellant would be entitled to a further amount under the head of loss of income. The amount awarded under this head by the Tribunal is for a period of three months. Consequent to the revision of monthly income as referred to above, the appellant would be entitled to a further sum of Rs.4,500/-. The amounts awarded under

the other heads are reasonable. In such circumstances, the additional amount receivable by the appellant is found to be Rs.15,840/- ($11340 + 4500$). In such circumstances, this appeal is allowed by modifying

the award dated 21.01.2019 in O.P.(M.V.) No.824/2016 passed by the Motor Accident Claims Tribunal, Pala, by awarding an additional compensation of Rs.15,840/-(Rupees fifteen thousand eight hundred and forty only), which shall be deposited by the 3rd respondent Insurance Company within a period of three months from the date of receipt of the copy of this judgment along with interest at the rate as awarded by the Tribunal with proportionate cost.

Sd/- ZIYAD RAHMAN A.A. JUDGE scs

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