

The Manager vs Sajeevan

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Court : Kerala

Decided On : May-31-2023

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : RP/1237/2022

Appellant : The Manager

Respondent : Sajeevan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN
WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945
R.P.NO.1237 OF 2022 AGAINST THE ORDER/JUDGMENTMACA
2337/2013 OF HIGH COURT OF KERALA REVIEW PETITIONER/S:
THE MANAGER NEW INDIA ASSURANCE COMPANY LIMITED, SUB
JAIL ROAD, ALUVA, ERNAKULAM DISTRICT, PIN - 683101 BY ADV
P.K. BABU RESPONDENT/S: 1 SAJEEVAN, AGED 51 YEARS S/O.
BALAN, PULIYANARPARAMBIL HOUSE, P.O. KARA
KODUNGALLOOR, THRISSUR DISTRICT, PIN - 680664 2 FAIZAL S/O.
MOHAMMED, INTINUL HOUSE, P.O. FLOOR, ERNAKULAM
DISTRICT, PIN - 683501 3 SIDDIQUE S/O. MOHAMMED,

PAZHUPARAMBIL HOUSE, P.O. AZHEEKODE, PAY BAZAR, KODUNGALLOOR, THRISSUR DISTRICT, PIN - 680666 4 IJAS AHAMMED KODUNGALLOOR, THRISSUR DISTRICT - 680 666, THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 31.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

ORDER

The review petitioner is the 3rd respondent-insurer in

M.A.C.A.No.2337 of 2013, arising out of the award dated 30.08.2013 of the Motor Accidents Claims Tribunal, Irinjalakuda, in O.P(MV)No.630 of 2010. The said original petition was one filed by the 1st respondent herein-claimant under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the injuries sustained by him in a motor accident, which occurred on 22.04.2010, while he was travelling on a motorcycle bearing registration No.KL-08/AH-6080, as a pillion rider. At the place of the accident, the motorcycle was hit by a lorry bearing registration No.KL-07/H-1825, owned and driven by respondents 2 and 3 herein and insured with the petitioner herein. In the original

petition, the claimant claimed a total compensation of Rs.13,46,000/- under various heads, which was limited to Rs.13,00,000/- for the purpose of payment of court fee. The Tribunal, by the award dated 30.08.2013, awarded a total compensation of Rs.5,95,950/- together with interest at the rate of 7.5% per annum from the date of petition till realisation, with proportionate costs. On a finding that the accident occurred due to the rash and negligent driving of the lorry by its driver, the petitioner herein-insurer was directed to satisfy the award.

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2. Dissatisfied with the quantum of compensation

awarded by the Tribunal, the claimant filed M.A.C.A.No.2337 of 2013 before this Court, which was disposed of by judgment dated 03.12.2019 granting an additional compensation of Rs.3,89,625/- together with interest at the rate of 8%

per annum from the date of petition till realisation and the petitioner herein-insurer was directed to satisfy the additional compensation granted in the appeal, together with interest, within a period of two months from the date of receipt of a certified copy of that judgment.

3. Towards permanent disability, the Tribunal awarded a

sum of Rs.1,44,000/- $[4,000 \times 12 \times 15 \times 20 / 100]$. Since the monthly income of the appellant/claimant was re-fixed notionally as Rs.6,000/-, applying the multiplier applicable to the age group of 31-35 years and the percentage of the permanent disability as 40%, the compensation under permanent disability was re-fixed as Rs.4,60,800/- $[6,000 \times 12 \times 16 \times 40 / 100]$, resulting in additional compensation of Rs.3,16,800/- $[4,60,800 - 1,44,000]$.

4. The petitioner-insurer has filed this review petition,

invoking the provisions under Order XLVII Rule 1 of the Code of Civil Procedure, seeking a review of the judgment dated 03.12.2019 in M.A.C.A.No.2337 of 2013, by contending that the age of the 1st respondent-claimant as on the date of the accident -4- was 38 years, which came to the knowledge of the insurer only on production of Annexure-A2 PAN card with Permanent Account No.LOBPS2482E, by the claimant, after the judgment in M.A.C.A.No.2337 of 2013, in which his date of birth is shown as 12.05.1971. If, as on the date of the accident, the 1st respondent- claimant was aged 38 years, the multiplier applicable is 15, instead of the multiplier of 16 applied by this Court in the

judgment in M.A.C.A.No.2337 of 2013.

5. Heard the learned Standing Counsel for the petitioner-

insurer. Despite the service of notice, there is no appearance for respondents 3 and 4. Service of notice to respondents 1 and 2 was effected through paper publication.

6. In the judgment sought to be reviewed, the

compensation under the head permanent disability was re-fixed as Rs.4,60,800/- $[6,000 \times 12 \times 16 \times 40 / 100]$, since the monthly income of the claimant was refixed notionally as Rs.6,000/-, and applying the multiplier applicable to the age group of 31-35 years and the percentage of the permanent disability as 40%, as against Rs.1,44,000/- $[4,000 \times 12 \times 15 \times 20 / 100]$ awarded by the Tribunal.

7. Now, as evident from Annexure A2 PAN card with Permanent Account No.LOBPS2482E produced by the 1st respondent-claimant before the petitioner herein-insurer, the age -5-

of the claimant as on the date of the accident was 38 years. If that be so, in view of the law laid down by the Apex Court in National Insurance Company v. Pranay Sethi [(2017) 16 SCC 680], the multiplier applicable to the age group of the claimant is 15 and not the multiplier of 16 applied in the judgment sought to be reviewed.

8. In that view of the matter, the compensation payable to the 1st respondent-claimant under the head permanent disability is recalculated as Rs.4,32,000/- $[6,000 \times 12 \times 15 \times$

in the judgment sought to be reviewed. Therefore, the additional compensation payable to 1st respondent-claimant under the head permanent disability is recalculated as Rs.2,88,000/- $[4,32,000 - 1,44,000]$, instead of Rs.3,16,800/- $[4,60,800 - 1,44,000]$ granted in the judgment sought to be reviewed. In the result, the entitlement of the 1st respondent-claimant, who is the appellant in M.A.C.A.No.2337 of 2013, for additional compensation under the head permanent disability is refixed as Rs.2,88,000/-, resulting in recalculation of the additional compensation granted in the judgment sought to be reviewed under various heads as Rs.3,60,825/- $[40,000 + 1,000 + 7,275 + 14,050 + 500 + 2,88,000 + 10,000]$ together with interest at -6- the rate of 8% per annum from the date of petition till realisation, which the insurer shall pay within a period of two months from the date of receipt of a certified copy of that judgment. The review petition is allowed to the extent indicated above. Sd/- ANIL K. NARENDRAN, JUDGE bkn/- -7- APPENDIX OF RP 1237/2022 PETITIONER ANNEXURES

Annexure A 1 CERTIFIED COPY OF JUDGMENT

Annexure A2 THE TRUE COPY OF THE PAN CARD DATED NIL PRODUCED
BY THE 1ST RESPONDENT/APPELLANT BEFORE THE REVIEW
PETITIONER'S OFFICE

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