

**David vs Shajahan**

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**SooperKanoon Citation :** [sooperkanoon.com/1439494](http://sooperkanoon.com/1439494)

**Court :** Kerala

**Decided On :** Sep-08-2023

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

**Appeal No. :** MACA/172/2019

**Appellant :** DAVID

**Respondent :** Shajahan

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
FRIDAY, THE 8TH DAY OF SEPTEMBER 2023 / 17TH BHADRA, 1945  
MACA NO. 172 OF 2019 AGAINST THE AWARD DATED 12.12.2017 IN  
OPMV 1220/2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL  
,KOLLAM

APPELLANT/PETITIONER: DAVID AGED 60 YEARS  
S/O.LUKOSE,SUNI VILLA, NEDUPANA,KOLLAM-691 576 BY ADVS.  
PRATHEESH.P SMT.RENY ANTO RESPONDENTS/RESPONDENTS 1  
& 3: 1 SHAJAHAN S/O. YUSUF KUNJU,AMEENA MANZIL,  
KAREEPRA, KOTTARAKKARA, KOLLAM-691 506 2 THE DIVISIONAL  
MANAGER M/S. NATIONAL INSURANCE CO.LTD., KOLLAM-691 001

BY ADV SMT.DEEPA GEORGE-R2 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 08.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

## **JUDGMENT**

The appellant is the petitioner in OP(MV) No.1220/2015 on

the files of the Motor Accidents Claims Tribunal, Kollam. The aforesaid claim petition was submitted by the appellant seeking compensation for the injuries sustained by him in a motor accident that occurred on 01.10.2014 when the motorcycle bearing registration No.KL/24G/7954, ridden by the 2 nd respondent in a rash and negligent manner, hit the appellant. He sustained injuries on

account of the said accident. The total amount of claim was `3,00,000/- (Rupees three lakhs only).

2. The 1st and 2nd respondents, the owner and rider of the

motorcycle, remained ex-parte. The 2 nd respondent/3rd respondent, the Insurance Company, appeared and submitted a written statement admitting the existence of an insurance policy in respect of the motorcycle. However, the quantum of compensation claimed by the appellant was disputed.

3. The evidence in this case consists of Exts.A1 to A12 from the side of the appellant. No evidence was adduced from the side of the respondents. After the trial, the tribunal passed an award allowing a total compensation of `1,87,875/- and the 2nd :3 :

respondent in this appeal was directed to deposit the said amount along with the interest at the rate of 7% per annum from the date of petition till realisation. As it was found that the 2 nd respondent in the claim petition did not have a valid driving licence at the time of the accident, the 2nd respondent in this appeal was permitted to realize the said amount from the owner of the vehicle, who is the 1 st respondent herein. This appeal is submitted by the claimant, being dissatisfied with the quantum of compensation.

4. Heard Sri. P. Pratheesh, the learned counsel appearing for the appellant and Smt. Deepa George, the learned counsel appearing for the 2nd respondent Insurance Company.

5. The learned counsel for the appellant mainly contended

that the amount awarded under the head of compensation for permanent disability is on the lower side. On the other hand, the learned counsel for the 2nd respondent opposes the aforesaid contention by pointing out that no documents were produced by the appellant to establish the permanent disability sustained by the appellant. Yet, the tribunal had taken 10% as the partial permanent disability suffered by the appellant, which is on the higher side.

6. On going through the materials placed on record, I find some force in the contention put forward by the learned counsel for :4 :

the 2nd respondent. Even though the appellant had sustained injuries, including the head injury, there is nothing to indicate that he had suffered any permanent disability. In such circumstances, I do not find any necessity to interfere with the amount awarded under the head of the compensation for permanent disability.

7. Another contention put forward by the learned counsel

for the appellant is with regard to the amount awarded under the head of loss of earnings. It is pointed out that the said monthly income taken by the tribunal was only `5,000/- which is on the lower side, and the period for which the compensation of loss of earnings was computed was only three months, whereas the nature of injuries sustained by the appellant would certainly make him eligible to get the compensation under the said head for a longer period. From the materials placed on record, including the date of the accident and other relevant aspects, I am of the view that the revision of compensation under the said head is required in the light of the observations made 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]. In the light of the principles laid down in the said decisions, the monthly income of :5 : the appellant has to be fixed as `9,500/- as the accident occurred in

the year 2014. Moreover, taking note of the nature of injuries sustained, I deem it appropriate to grant compensation under the head of loss of earning for a period of four months. Thus, the amount under the head of loss of earnings would come to `38,000/- and since an amount of `15,000/- already awarded under the head, the additional amount would come to `23,000/-. It is seen that the compensation granted under the head of loss of amenities is only `18,000/- which is on the lower side, taking into account the nature of the injuries sustained. In the facts and circumstances, I deem it appropriate to grant a further amount of `15,000/- under the said head. Similarly, the amount claimed towards the compensation for pain and suffering is `30,000/- and the amount awarded under the said head is `25,000/-. In the facts and circumstances of the case, I deem it appropriate to grant a further sum of `5,000/- under that head. Thus, the appellant is entitled to an additional compensation of `43,000/- (23,000 + 15000 + 5000).

Accordingly, this appeal is disposed of directing the 2 nd respondent to deposit the amount of `43,000/- (Rupee forty three thousand only) along with interest at the rate as awarded by the :6 :

tribunal along with the proportionate costs within a period of three months from the date of receipt of a copy of this judgment. It is clarified that while computing the interest, the 2 nd respondent shall be entitled to exclude the period of delay of 265 days in filing the appeal. It is also clarified that, as the tribunal has permitted the 2 nd respondent to recover the compensation from the 1 st respondent after satisfaction of the award, it shall be open for the 2 nd respondent to exercise the said right in respect of the additional compensation as well.

Sd/- ZIYAD RAHMAN A.A. JUDGE ncd

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