

Ummachu vs Hans

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Court : Kerala

Decided On : Sep-30-2022

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : MACA/1565/2012

Appellant : Ummachu

Respondent : HANS

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944
MACA NO. 1565 OF 2012 AGAINST THE AWARD IN OP(MV)
NO.125/2008 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
OTTAPPALAM APPELLANT/PETITIONER :- UMMACHU AGED 66
YEARS W/O. SULAIMAN, VELAMPARAMBIL HOUSE,
PERUMBILLISSERY WEST, CHOVOOR VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT. BY ADV SRI.SHEJI P.ABRAHAM
RESPONDENTS/RESPONDENTS :-

1 HANS AGED 22 YEARS S/O. JOHN, THOTTANPARAMBIL HOUSE, AMMADAM P.O., PARALAM VILLAGE, THRISSUR TALUK, THRISSUR-680024 (DRIVER OF REG. NO.KL 8 AG 3610 MOTOR CYCLE). 2 HAMZA A.S. AMBALAKULAM HOUSE, CHERPU P.O., THRISSUR TALUK, THRISSUR DISTRICT-680021 (OWNER OF REG.NO. KL 8 AG 3610 MOTOR CYCLE). 3 UNITED INDIA INSURANCE COMPANY LTD. IVTH FLOOR, PATHAYAPURA, NEAR RAGAM THEATRE, ROUND SOUTH, THRISSUR-680001, POLICY NO. BY ADV SRI.P.JACOB MATHEW, SC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 30.09.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of September, 2022 This appeal is filed challenging an award passed by Motor

Accidents Claims Tribunal, Ottapalam (for short the Tribunal) on 30.06.2011 in O.P.(MV) No.125 of 2008. The appellant is the petitioner before the Tribunal. According to her, on 16.11.2007 at about 4.30 P.M, she was knocked down by a motorcycle bearing Registration No.KL-8/AG-3610 ridden by its rider and thereby sustained serious injuries. She was taken to District Hospital, Thrissur and was treated there as outpatient. For the sake of convenience, the parties to this appeal will hereinafter be referred to as the petitioner and respondents 1 to 3 in accordance with their status in the Original Petition.

2. Alleging that the accident was occurred due to the rash

and negligent driving of the motor cycle by the rider, arraying him as the 1st respondent and the owner and the insurer of the vehicle respectively as the 2nd and 3rd respondents the Original Petition above was filed claiming a sum of Rs.25,000/- as compensation. Respondents 1 to 3 are alleged as jointly and severally liable to compensate the petitioner.

3. Notice was served on the respondents. First respondent

entered appearance and filed counter statement denying all the averments in the Original Petition including negligence alleged against him. The age, income, occupation of the petitioner and the quantum of compensation claimed by him were also disputed. Admittedly, the vehicle was insured with the third respondent at the relevant time of accident.

4. The third respondent has also filed written statement

denying the averments made by the petitioner in the claim petition. It was alleged that the accident was occurred solely due to the negligence of the petitioner herself and the rider of the motorcycle was not responsible for it and that the rider of the motorcycle did not hold a valid driving licence to ride the same at the relevant time of accident. Admittedly, the vehicle was insured with them.

5. Before the Tribunal, documentary evidence was adduced

by the petitioner as Exts.A1 to A9. The respondents did not adduce any evidence. The Tribunal on appreciation of the evidence found negligence on the part of the first respondent who was riding the motor cycle at the relevant time. Accordingly, the first respondent was made liable for the accident by his rash and negligent riding. Rs.4,000/- was arrived at as the compensation payable and the third respondent was directed to deposit the same with interest at the rate of 8% per annum from the date of filing of the Original Petition till the date of realization alongwith Rs.500/- as costs. Aggrieved by the fixation of Rs.4,000/- as compensation and alleging it to be disproportionate, the appeal on hand is preferred.

6. The contention of the learned counsel was that the

petitioner has sustained lacerated wound measuring 5 x 2 cm on right back side of scalp and a contusion over left parietal region. She was treated as outpatient and had suffered an expenditure of Rs.359/- towards treatment. According to the learned counsel due to the injuries sustained, the petitioner was unable to attend the work for some days. According to the learned counsel the fixation of monthly

income by the Tribunal requires reconsideration on the basis of the fixation of monthly income by the Apex Court in Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd [(2011) 13 SCC 236].

7. The learned counsel for the third respondent has pointed

out that Rs.4,000/- alone is claimed as the monthly income of the petitioner in the Original Petition filed. According to him, therefore, this Court cannot fix it over and above the claim made by the petitioner herself. The learned counsel has submitted further that the injuries being minor ones, there is no scope for enhancement of the compensation on the basis of the arguments advanced by the petitioner.

8. Petitioner had marked Exts.A1 to A9 before the Tribunal

in evidence. Ext.A2 is the copy of the wound certificate issued from District Hospital, Thrissur and the injuries sustained are reported in it as lacerated wound on right back of scalp 5x 2 cm and contusion over left parietal region. Ext.A6 is the outpatient ticket issued from Medical College Hospital, Mulamkunnathukavu. Ext.A7 is the report of CT scan of head. Ext.A8 series are the prescriptions issued from Jubilee Mission Medical College, Thrissur and Ext.A9 series are medical bills for Rs.359/-. When viewed in the backdrop of the injuries sustained, this Court finds it reasonable to consider loss of earning for two weeks.

9. Rs.4,500/- was fixed by the Apex Court as the monthly

income in the case of a coolie worker while computing compensation payable to him following the injuries sustained by him in a motor accident occurred in the year 2004. True that the petitioner had claimed only Rs.4,000/-. But, the claim of monthly income in the case of self employed persons cannot be based on a precise data or information furnished by the party. Therefore, this Court is inclined to take the monthly income corresponding to the fixation in Ramachandrappa supra and in due consideration of the year in which

the motor accident was occurred. Rs.6,000/- being a sum proportionate, is taken. When loss of income for two weeks is taken Rs.3,000/- is payable under the head loss of earnings. There was no inpatient treatment and the nature of injuries does

not demand the help of a bystander. Therefore, claim for compensation under the head bystander expenses is declined, but Rs.500/- is granted towards extra nourishment. This Court is inclined to award Rs.500/- each under the heads transportation expenses and damages to clothing. Under the head pain and suffering and loss of amenities and enjoyments in life Rs.4,000/- and Rs.1,000/- respectively are awarded. In the above calculation Rs.9,500/- would be the sum payable to the petitioner. The sum stands already awarded by the Tribunal being Rs.4,000/-, the petitioner will get Rs.5,500/- (Rupees five thousand five hundred only) as additional compensation. That 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 realization. The third respondent shall deposit the additional compensation now arrived at with interest fixed as above within a period of two months from the date of receipt of a copy of this judgment. As directed by the Tribunal, the third respondent shall deposit the amount with interest and shall also get it recovered from the second respondent.

As directed by this Court in the order passed in C.M.A.No.1/2012 while condoning the delay occurred in filing the appeal on hand the insurer is exonerated from paying interest for 303 days, by which filing of the appeal was delayed. MACA stands allowed accordingly. Sd/- MARY JOSEPH SMA JUDGE

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