

Ajikumar vs Subin

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Court : Kerala

Decided On : Aug-31-2022

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : MACA/1173/2013

Appellant : Ajikumar

Respondent : SUBIN

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 31ST DAY OF AUGUST 2022 / 9TH BHADRA,
1944 MACA NO. 1173 OF 2013 OP(MV)NO.1470/2007 OF MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ATTINGAL
APPELLANT/PETITIONER: AJIKUMAR, S/O.THANKAPPAN, KONIL
KUNNUMPURATHU VEEDU, ALAMPARA, ANADU, PALODE VILLAGE.
BY ADV SRI.M.R.SARIN RESPONDENTS/RESPONDENTS: 1 SUBIN,
S/O.SUDARSANAN, ALAMPARA, PACHA P.O., NANNIYODE,
NEDUMANGAD - 695 003. 2 THE NATIONAL INSURANCE CO.LTD. II
FLOOR, SOUNDARYA BUILDING, PULIMOODU, M.G.ROAD,
THIRUVANANTHAPURAM - 695 003. R2 BY ADV

SMT.P.K.SANTHAMMA THIS MOTOR ACCIDENT CLAIMS APPEAL
HAVING BEEN FINALLY HEARD ON 26.08.2022, THE COURT ON
31.08.2022 DELIVERED THE FOLLOWING: MACA 1173 of 2013 2

JUDGMENT

This appeal has been preferred by the claimant in OP(MV)No.1470 of 2007 on the file of Motor Accidents Claims Tribunal, Attingal, challenging inadequacy of the compensation awarded by the Tribunal.

2. The appellant, a 44 year old man, met with a road

traffic accident on 15.09.2007 at 7.30 a.m. While he was standing at Nandiyode junction, KL 21/8541 motorcycle ridden by the 1st respondent in a rash and negligent manner knocked him down and he sustained injuries including central fracture dislocation of right hip. He was taken to Medical College Hospital, Thiruvananthapuram, where he was treated as an In Patient for 6 days. He approached the Tribunal claiming compensation of Rs.1,50,000/-. But the Tribunal awarded only a meager amount of Rs.4,000/-, which is under challenge in this appeal.

3. The 1st respondent was the owner-cum-rider of the

MACA 1173 of 2013 3 offending motorcycle and the 2nd respondent was the Insurer. The accident, injuries and the policy are not disputed by the 2nd respondent-Insurer.

3. No oral evidence was adduced from either side Exts.A1 to A9 were marked from the side of

appellant/claimant. The Tribunal found that the appellant suffered only two abrasions, feeling of pain and tenderness of spine and awarded only Rs.4,000/- as compensation.

4. Ext.A6, the Treatment Certificate says that there

was central fracture dislocation of right hip. Ext.A7 Discharge Card shows that he was admitted in Medical College Hospital, Thiruvananthapuram on 15.09.2007 and he

was discharged on 21.09.2007. That Certificate further shows that there was pain on hip, abrasion on left ankle and left knee and movement of hip was restricted coupled with spinal tenderness. It was further noted in that Discharge Card that there was central fracture acetabulum hip. Learned Tribunal without noting those injuries came to the

MACA 1173 of 2013 4

conclusion that there were only two abrasions and feeling of

pain and awarded only a nominal amount of Rs.4,000/- as compensation.

5. According to the appellant, he was a Peon by

profession. He produced Ext.A9 Salary Certificate issued from SNV Higher Secondary School to show that he was on leave for 76 days in connection with the road traffic accident. He took commuted leave for 15 days and half pay leave for the remaining period. His salary was Rs.6,176/- including House Rent Allowance. If at all he was paid during the period of commuted leave and he received half pay during the period of half pay leave, if this accident had not happened, he could have utilized that leave for his own purposes, and so, he is eligible to get compensation for loss of his leave, at the same rate as of his salary. So for 76 days of leave, excluding HRA, he is entitled to get Rs.15,266/- (2.5 months X 6026).

6. Towards transportation expenses, Rs.1,000/- is to MACA 1173 of 2013 5

be awarded, towards damaged clothing Rs.500/- is awarded, towards bystander expenses and extra nourishment, he is entitled to get Rs.1,200/- each at the rate of Rs.200/- per day as he was hospitalised for 6 days.

7. Towards pain and suffering, Rs.15,000/- is allowed as the Discharge Certificate shows that he had suffered central fracture acetabulum hip and he was on leave for 76 days in connection with the accident.

8. Though Ext.A8 medical prescription is produced by

the appellant, no medical bills are there to prove the treatment expenses. Since he was treated at Medical College Hospital, Thiruvananthapuram, he might not have expended any amounts towards treatment.

9. There is nothing to show that he had suffered any permanent disability due to the accident. So, he is not eligible to be compensated under that head. MACA 1173 of 2013 6

Head of claim	Amount	Amount	Difference
compensation Loss of leave ..	Rs.15,266/-	Rs.15,266 /-	Transportation Rs.1,000/-
Rs.1,000/- expenses Damaged	Rs.500/-	Rs.500/-	clothing Bystander Rs.1,200/-
Rs.1,200/- expenses Extra	nourishment ..	Rs.1,200/-	Rs.1,200/- Pain and
Rs.15,000/- suffering	Total	Rs.34,166/-	Tribunal already awarded
Rs.4,000/- Enhanced compensation	is 30,166/-	(34,166 - 4,000)	

10. In the result, the appellant is entitled to get compensation of Rs.34,166/-. He was already paid Rs.4,000/- by the Tribunal. So he is eligible to get the balance amount of Rs.30,166/- (Rupees Thirty Thousand One hundred and Sixty Six only) as enhanced compensation. MACA 1173 of 2013 7

11. The 2nd respondent-Insurer has got a case that the

1st respondent owner-cum-rider was not having a valid Driving Licence at the time of accident and so the Insurer is not liable to indemnify the insured. They filed I.A.No.7388 of 2008 before the Tribunal calling upon the 1st respondent to produce his Driving Licence. But, he failed to produce the Driving Licence. So adverse inference is drawn against him holding that he had no Driving Licence at the time of

accident. But as the Insurer is admitting the policy, they have to deposit the compensation amount, and thereafter, they can recover the amount so deposited, from the 1st respondent owner-cum-rider.

12. In the result, the 2nd respondent-Insurer is directed

to deposit the enhanced compensation of Rs.30,166/- (Rupees Thirty Thousand One hundred and Sixty Six only) in the Bank account of the appellant with 8% interest from the date of petition till realisation within a period of two months from the date of receipt of a copy of this judgment. The MACA 1173 of 2013 8

deposit must be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06/09/2019 and clarified in O.M.No.D1/62475/2016 dated 07/11/2019 after deducting the liabilities, if any, of the appellant towards Tax, balance court fee and legal benefit fund. After depositing the amount, the 2nd respondent can recover that amount from the 1st respondent-owner and his assets.

The appeal is allowed accordingly. No order as to costs. Sd/- SOPHY THOMAS
JUDGE DSV/27.08.2022

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