Renjith vs Anu.S.

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Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : MACA/1696/2011

Appellant : Renjith

Respondent : ANU.S.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 MACA NO. 1696 OF 2011 AGAINST THE AWARD IN OPMV 1498/2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL KOLLAM APPELLANT/PETITIONER: RENJITH, S/O.AYYAPPAN PILLAI, RAVIMANGALATHU VEEDU, KALLELIBHAGOM MURI,, KARUNAGAPPALLY, KOLLAM DISTRICT. BY ADVS. SRI.C.RAJENDRAN SMT.R.S.SREEVIDYA RESPONDENTS/RESPONDENTS:

1 ANU.S. S/O.SARASAN.M, DEVIPRIYA, PADA NORTH, KARUNAGAPPALLY, KOLLAM-690 518 2 ARUN S/O.SOMAN ARUN

NIVAS CHERUSSERIBHAGOM, CHAVARA, KOLLAM-691 583 3 THE DIVISIONAL MANAGER BAJAJ ALLIANCE GENERAL INSURANCE CO.LTD.,, THIRUVANANTHAPURAM - 695 001. BY ADV SRI.AKHIL K.MADHAV OTHER PRESENT: ADV. AKHIL.K.MADHAV-R3 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 28.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 1696 OF 2011 2

JUDGMENT

The appellant is the claimant in OP(MV) No.1498/2006 on the file of Motor Accident Claims Tribunal, Kollam. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the injury sustained to the appellant/claimant in a motor accident occurred on 1.11.2005 while the appellant/claimant was riding his motorcycle bearing Reg.No.KL-2/U 4625 along N.H47 Kollam-Alleppey road and reached at Kuttivattom, maruthi esteem car bearing registration No.KL-02/T-9702 driven by the 2 nd respondent in a rash and negligent manner in the same direction hit on his (R) leg and he was thrown from the motor cycle and as a result he sustained grievous injuries.

2. The accident happened due to the rash and negligent

driving KL-02/T-9702 by the 2nd respondent which is owned by the 1st respondent and 3rd respondent is the insurer of the vehicle. Total compensation of Rs.5,00,000/ (Rupees Five Lakhs only) has been claimed.

3. Before the Tribunal respondents 1 and 2 remained ex MACA NO. 1696 OF 2011 3

parte. 3rd respondent/Insurance Company filed written statement admitting the policy coverage with respect to the offending vehicle. It is contented that the accident happened due to the rash and negligent riding of motorcycle by the appellant/claimant. It is also contended that the age, occupation and income of the appellant is to be proved by the appellant with relevant records. The treatment records would confirm that the fracture sustained are well united. Hence, the claims under various heads are highly exorbitant and excessive.

4. The claimant was examined as PW1. Exhibits A1 to A10 were marked from the side of the claimant.

5. The Tribunal, after evaluating the evidence and the facts

and circumstances of the case, found that the 2 nd respondent was the responsible for the accident, 1st respondent being the owner of the offending vehicle is liable to compensate for the wrongful act

of the 2nd respondent. Being the insurer, the 3rd respondent is held

liable to indemnify the 1st respondent.

6. Dissatisfied with the quantum of compensation awarded by the Tribunal under various heads, appellant/claimant (herein MACA NO. 1696 OF 2011 4 after be referred as the 'claimant') came up in appeal before this Court on the grounds stated in the memorandum of appeal.

7. Heard the learned counsel for the appellant and the

counsel for the 3rd respondent-insurer. Notice to respondents 1 and 2 was dispensed with at the risk of the appellant. 3 rd respondent appeared through the learned counsel Sri.Akhil K.Madhav. Lower court records were called for and perused.

8. According to the learned counsel for the claimant,

claimant was examined as PW1 and gave evidence regarding the income. But the tribunal notionally fixed his monthly income as

Rs.3,000/- which is very low. The appellant was 45 years old at the time of accident. The Tribunal adopted the multiplier as '13'. The proper multiplier as per Sarala Varma V. Delhi Transport Corporation (2009 (6) SCC 121) which has been approved in National Insurance Company Limited V. Pranay Sethi and Ors (2017 (4) KLT 662) is '14'.

9. The learned counsel for the 3 rd respondent on the other

hand would contend that reasonable and just compensation has already been awarded by the Tribunal and no enhancement is called for at the instance of this Court. MACA NO. 1696 OF 2011 5

10. Compensation awarded by the Tribunal under various

heads are as follows: Compensation allowed at different Amount awarded heads Rs. PART -I a Loss of earning for 6 months Rs.18,000/- b Partial loss of earning Nil c Transport to the hospital Rs.1,000/- d Extra nourishment Rs.1,000/- e Damage to clothing and articles Rs.500/- f Others -Bystander expenses Rs.1,500/- g Medical expenses Rs.36,378/- PART-II h Compensation for Pain and suffering Rs.20,000/- i Compensation for Continuing for permanent disability Rs.31,200/- (Rs.2000 x12x13x10/100) j Compensation for the loss of amenities Rs.10,000/- in life Total Rs.1,19,578/- rounded as Rs.1,19,600/- (Rupees One lakh nineteen thousand and six hundred only)

11. To prove the income, the claimant got examined himself as PW1 and Ext.A10 letter from Zydus Pathline, A Division of Cadila Healthcare Ltd has been produced. But the alleged person MACA NO. 1696 OF 2011 6 who issued the certificate was not examined, and hence the Tribunal did not accept the certificate as proof of the income of the claimant.

12. In Ramachandrapa v. manager, Royal Sundaram

Alliance Insurance Company Limited [(2011) 13 SCC 236], the Hon'ble Apex Court notionally fixed the monthly income of a coolie in the year

2004 at Rs.4,500/-. It was held that a claimant working as coolie cannot be expected to produce any documentary evidence to substantiate their claim. It is also held that in the absence of any other evidence contrary to the claim made by the claimant, the Tribunal should have accepted the claim of the claimant. It is also held that in a given case if the claim made is so exorbitant or if the claim made is contrary to ground realities the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work which may include the ground realities prevailing at the relevant point of time.

13. In Syed Sadiq v. Divisional manager, United India Insurance Co. Ltd. [(2014) 2 SCC 735] Apex Court was dealing

with an appeal which arouse out of an accident occurred on 14-08-2008. Claimant was a vegetable vendor aged about 24 years who sustained injury to the lower end to right femur and left upper arm and his right leg had to be amputated. Question arouse about his monthly income. Following the principles in Ramchandrapa's case it was held that there is no reason for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. It is further found that going by the present state of economy and rising prices in agricultural products a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.

14. In the present case, the claimant was 45 years at the

time of accident occurred on 1.11.2005. So as per the principles laid down in the above decisions, the monthly income of Rs.5,000/- claimed is quite reasonable and is hereby accepted.

15. In Raj Kumar v. Ajay Kumar and Anr. [(2011) 1 SCC

343 : 2011 ACJ 1 : 2010 KHC 5021] the general principles relating to compensation in injury cases has been dealt with in detail and it has been held therein that the provision of the

Motor Vehicles Act, 1988, makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. It is also held that a person is not only to be compensated for the physical injury, but also for the loss which injured has suffered as a result of such injury.

16. In personal injury cases, heads under which the compensation is awarded has been classified into two as pecuniary damages (Special damages) and non pecuniary damages (general damages). MACA NO. 1696 OF 2011 9

17. In paragraph No.5, the heads coming under

pecuniary damages and non pecuniary damages have been discussed. In personal injury cases, compensation would be awarded only under the heads ie, expenses relating treatment, hospitalization, medicine, transportation nourishing food and miscellaneous expenditure and loss of earning during the period of treatment as well as damages for pain, suffering and trauma as a consequence of the injuries. In cases of serious injuries, where there is specific medical evidence corroborating evidence of the claimants, the compensation would be granted under the heads loss of earning (and other gains) which the injured would have made had he not been injured, comprising :- Loss of future earnings on account of permanent disability, Future medical expenses, Loss of amenities (and/or loss of prospects of marriage) and Loss of expectation of life (shortening of normal longevity). The assessment of non pecuniary damages under the damages for pain, suffering and trauma, loss of amenities and

MACA NO. 1696 OF 2011 10 loss of expectation of life involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant.

18. In the present case the claimant sustained following injuries: 1.Lacertated wound (R) ankle 2.Minor abrasion Nose 3.Abrasion eyebrow 4.Abrasion elbow

19. Exhibit A6 discharge card would show that he was

> admitted on 1.11.2005 and discharged on 10.11.2005. He was diagnosed type III A compound fracture both bone (R) leg lower- third. Ext.A7 discharge card issued from Parabrahma Specialty Hospital and Research Centre, Oachira would show that again he was admitted on 27.12.2006 because of Re-fracture Tibia (R) and discharged on 2.1.2007. Ext.A8 treatment certificate issued by Dr.C.Ramanunni of Dr.Nair's Hospital, Kollam. He was treated by debridement and interlocking and Nailing. For Re-fracture he was

MACA NO. 1696 OF 2011 11 treated by Fibulectomy, interlocking Nailing and bone grafting. The doctor has certified that the fracture has united completely and he requires another operation for removal of implant. So the medical records produced from the side of the claimant would prove the lengthy procedure undergone by him.

20. His disability is taken as 10% by the Tribunal is not

challenged and hence can very well be followed here also. Hence, towards permanent disability claimant is entitled to get Rs.5000 X 12 X 14 X 10/100 = Rs.84,000/-. The amount already awarded by the Tribunal is Rs.31,200/- the balance would be Rs.52,800/- (Rs.84,000-31,200).

21. It is further contended that the claimant undergone

inpatient treatment for 17 days in the hospital. In view of the serious nature of injuries and the procedures of treatment undergone by the claimant, the loss of earnings for 6 months awarded by the Tribunal is seems to be reasonable. Hence, towards loss of earnings the claimant is entitled to get Rs.30,000/- (Rs.5,000X6). Deducting the amount already awarded, the balance would be Rs.12,000/- (30,000 - 18,000).

22. The learned counsel for the claimant further contend

that in view of the serious nature of injuries sustained by the claimant and further that he had sustained a Re-fracture also some more amount has to be awarded towards pain and suffering. Towards pain and suffering the Tribunal already awarded Rs.20,000/-, Rs.5,000/- more is awarded towards pain and suffering that will come to Rs.25,000/-. Deducting the amount already awarded, the balance would be Rs.5,000/- (25,000- 5,000).

23. In the result, appeal is allowed in part by enhancing

compensation to an amount of Rs.69,800/- (Rupees sixth nine thousand eight hundred only) (52,800+ 12,000+5,000) which will carry interest @ 7.5% per annum from the date of petition excluding the period of delay of 462 days in filing the appeal. 3 rd respondent, the Insurance Company, shall satisfy additional compensation granted in this appeal together with interest within a period of two months from the date of receipt of certified copy of this judgment. The appellant shall provide the Bank account details (attested

 copy of relevant page of bank pass book, Bank Account number and IFSC code of the branch) before the Tribunal with a copy to the learned Standing Counsel for the insurer, within one month from the date of receipt of certified copy of this judgment. There will be no order as to costs. Sd/-

M.R.ANITHA JUDGE ska