

Remya vs Joseph

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Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : MACA/2391/2013

Appellant : REMYA

Respondent : Joseph

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. 2391 OF 2013 AGAINST THE AWARD IN OPMV
90/2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
APPELLANT/PETITIONER: REMYA KOTTATHU (H), ETTUMANOOR
VILLAGE, PUNNATHURA WEST P.O., KOTTAYAM. BY ADVS.
SRI.C.M.TOMY SRI.K.J.JOSEMON SRI.MATHEW SKARIA
SRI.SUJESH J.MATHEW RESPONDENTS/RESPONDENTS:

1 JOSEPH PANDIYATH, VAIKOM P.O. 686 141 2 UCHIMAHALI
GRANDHI STREET, SIVATHIPATTI, THIRUNELVELI 627 001 3 THE
BAJAJ ALLIANCE GENERAL INSURANCE CO.LTD ERNAKULAM - 682

011 BY ADVS. SRI.C.I.ABRAHAM SRI.THOMAS M.JACOB SRI.JOSE KURIAKOSE VILANGATTIL SRI.T.R.JERRY SEBASTIAN SRI.THOMAS.M.JACOB.SC-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. 2391 OF 2013 2

JUDGMENT

The appellant is the claimant in OP(MV).90/2011 on the file of Motor Accidents Claims Tribunal, Kottayam. 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 vehicle accident occurred on 3.7.2010, while the appellant/claimant and another were travelling in an autorikshaw bearing Reg.No.KL-5L-3175 along the Thalayolaparambu-Ernakulam road and when they reached at Midayikunnam near D.B. College, the maruthi Omni van bearing registration No.KL 36/A 8274 driven by the 2 nd respondent, hit the autorikshaw and the appellant/claimant and the other passenger sustained injuries. They were immediately taken to the Medical College Hospital, Kottayam and treated there. Total compensation of Rs.7,10,800/ (Rupees Seven Lakh Ten Thousand and Eight Hundred only) has been claimed which was limited to Rs.5,00,000/- (Rupees Five Lakh only).

2. The 2nd respondent was driving the van at the relevant time. It is alleged that the accident happened due to the rash and MACA NO. 2391 OF 2013 3

negligent driving of the van by the 2 nd respondent. The 1st respondent is the registered owner of the van. The van was insured with the Bajaj Alliance General Insurance Company Limited, 3rd respondent represented by the Manager.

3. The 1st and 2nd respondents filed written statement,

contending that the compensation claimed by the appellant/claimant is excessive. The maruthi Omni van was insured with the 3rd respondent and was having valid policy at the relevant time in the name of the 1st respondent. The 2nd respondent was having valid driving licence for driving the van at the relevant time. Negligence alleged against the 2nd respondent is denied. It is contended that accident happened due to the negligence of the driver of the autorikshaw. The 3rd respondent is liable to indemnify the 1st respondent.

4. The 3rd respondent filed written statement, contending

that the compensation claimed by the appellant/claimant is excessive. The age, occupation and monthly income of the appellant/claimant alleged are denied. Policy coverage with respect to the offending vehicle is admitted. It is contended that the accident happened due to the rash and negligent driving of the MACA NO. 2391 OF 2013 4 Autorikshaw.

5. Exhibits A1 to A24 were marked from the side of the claimant. There was no oral evidence from either side.

6. Tribunal on evaluating the evidence and the facts and

circumstances found that the 2nd respondent was responsible for the accident. Total compensation of Rs.2,46,352/- was awarded and 3rd respondent was held liable to make good the loss.

7. Dissatisfied with the quantum of compensation awarded by the Tribunal under various heads, claimant came up in appeal before this Court on various grounds stated in the memorandum of appeal.

8. Heard the learned counsel for the appellant and the learned standing counsel for the 3rd respondent-insurer. Lower court records were called for and perused.

9. During the pendency of appeal, claimant filed IA

No.1/2019 for receiving additional documents. It was heard along with appeal. Additional documents are the medical bills for the continued treatment undergone during 2019 at Little Lourdes Hospital, Kidangoor. That was allowed and the additional documents are marked as Exts.A25, A26 and Ext.A 27 (series). MACA NO. 2391 OF 2013 5

10. Compensation awarded by the Tribunal under various

heads are as follows:-

SI	Head of claim	Amount claimed	Amount awarded	Basis	vital details
1	Transportation	5,000.00	2,000.00	In view of the visits to the hospital	(in rupees)
2	Extra nourishment	3,000.00	1,000.00	Nominal amount	(in rupees)
3	Damage to clothing	800.00	500.00	.do...	
4	Bystander expenses	25,000.00	3,800.00	Bystander expenses for 19 days at the rate of Rs.200/- per day	
5	Medical expenses	60,000.00	46,652.00	As per Ext.A13 series medical bills	
6	Loss of earning	72,000.00	24,000.00	4,000 x 6 = 24,000/-	
7	Pain and sufferings	75,000.00	26,000.00	In view of the pain suffered by the petitioner as a result of the injuries	
8	Loss of amenities	1,00,000.00	20,000.00	The injuries must have restricted his enjoyment of life and also his work	

9. Permanent disability 3,00,000.00 1,22,400.00 $4,000 \times 12 \times 17 \times 15$ divided by 100=1,22,400

10. For future expenses 70,000.00 Not allowed Other heads allowed TOTAL 7,10,800.00 2,46,352.00 ----- limited to Rs.5,00,000/- MACA NO. 2391 OF 2013 6

11. According to the learned counsel for the

appellant/claimant, the claimant was a tailor. Though she was not examined, A14 the attested copy of Identity card issued from Kerala Tailoring Workers Welfare Board has been produced. But the Tribunal fixed Rs.4,000/- as monthly income which is very low. He would also

contend that compensation awarded by the Tribunal under other heads are very low and hence seeks for enhancement of compensation on all heads.

12. The learned standing counsel for insurer on the other hand would contend that a just and reasonable compensation has already been awarded and no interference is called for in this appeal.

13. I would first deal with the aspect of monthly income 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

MACA NO. 2391 OF 2013 7

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.

14. In Syed Sadiq v. Divisional manager, United India

Insurance Co. Ltd. [(2014) 2 SCC 735] Apex Court was dealing with an appeal which arose 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 of right femur and left upper arm and his right leg had to be amputated. Question arose 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.

15. The appellant/claimant in this case was 26 years old at MACA NO. 2391 OF 2013 8

the time of accident on 3.7.2010 and according to her she is a tailor. Ext.A14 is the attested copy of the identity card to show that she is a member of Kerala Tailoring Workers Welfare Fund Board, Kottayam. But it will not prove her actual monthly income. Hence, as per the settled principles the monthly income of the appellant/claimant can very well be fixed as Rs.6,000/- instead of Rs.4,000/- taken by the Tribunal.

16. In Raj Kumar v. Ajay Kumar and Another (2011 (1)

SCC 343 = 2010 KHC 5021) the Apex Court has elaborately discussed the general principles relating to compensation in injury cases. 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). In paragraph No.5, the heads coming under pecuniary damages and non pecuniary damages have been enumerated. 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

MACA NO. 2391 OF 2013 9 of the injuries.

17. 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).

18. The assessment of non pecuniary damages under the

damages for pain, suffering and trauma, loss of amenities and 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. The tribunal in the

judgment had found that as per the schedule attached to

Workmen's Compensation Act, 1923, the percentage of disability for amputation below hip with stump not exceeding 12.70 cms in length measured from hip from deep of grave trenchanter is 80%. But amputation below hip with stump exceeding 12.70 cms in MACA NO. 2391 OF 2013 10 length measured from hip of grave trenchanter but not beyond middle thigh is 70%.

19. Appellant/claimant in this case sustained the following

injuries as per Ext.A7 wound certificate:- Loss of teeth (R) Upper incisor, Lacerated wound lower lip (R) side, 4x1x0.5 cm, Lacerated wound (R) leg medical aspect 6x3x1 cm, Lacerated wound foot dorsum 2x1x1 cm.

20. Ext.A11 discharge summary would reveal that

maluniting oblique # middle third tibia, delayed union Weber C Bimalleolar . She was treated by partial Fibulectomy + ORIF with interlocking nail tibia + Bone grafting + Cancellous screw fixation medial malleolus+ Syndesmotic screw fixation. Wound healed. BK slab retained.

21. It is contended that the appellant/claimant had

undergone inpatient treatment for 21 days in the hospital. The appellant/claimant sustained type 1 open fracture both bones of right leg, lacerated wound lower lip right side and lacerated wound right foot dorsum. Initially, she had undergone inpatient treatment from 3.7.2010 to 10.7.2010 and thereafter from MACA NO. 2391 OF 2013 11 10.11.2010 to 22.11.2010.

22. The learned counsel also contends that the

appellant/claimant has lost her teeth out of this accident, and he brings to my attention Ext.A9 to substantiate that allegation. Ext.A9 is the original case record issued from Dental College, Kottayam with dated seal 27/7/2010. It would show that she underwent treatment for complaint of pain of tooth. Missing is also described. But the Doctor was not examined and it could not be proved. However, Ext.A7 wound certificate refers about loss of (R) upper incisor. Claimant is only 26 year old young lady. So definitely she is entitled for compensation on that account. The appellant/claimant also produced Ext.A12 disability certificate issued by the medical board. The medical board assessed 30% locomotor disability. The Tribunal adopted only 15% permanent disability. The medical records as well as the subsequent treatment undergone by the appellant in the year 2019 have been produced. In view of the serious nature of injuries and the procedures of treatment undergone by the claimant, 30% permanent disability assessed by the medical board can very well be accepted, especially because she is a tailor and the main injury is on the leg.

MACA NO. 2391 OF 2013 12

Ext.A25 the treatment certificate of the year 2019 shows that she had undergone treatment with Maluniting # Tibia + Delayed Union Bimalleolar fracture (R) and her fractures united and the implants were removed on 4/4/2019. She was discharged on 6/4/2019 and her sutures were

removed on 13/4/2019. Ext.A26 is the discharge summary. It is also proved that she was treated for implant removal under spinal anaesthesia on 4.4.2019. Along with the treatment certificate and discharge summary she produced medical bills for Rs.30,034/-.

23. In view of the medical records including the disability

certificate issued by the medical board the loss of earnings for 6 months awarded by the Tribunal is seems to be reasonable and it can be refixed as Rs.36,000/- (Rs.6,000 x 6). The amount already awarded by the Tribunal is Rs.24,000/-. Deducting the amount already awarded, the balance would be Rs.12,000/- (36,000- 24,000). Towards permanent disability the Tribunal awarded Rs.1,22,400/- and it can be enhanced as Rs.3,67,200/- (6000x12x17x30/100). Deducting the amount already awarded, the claimant is entitled to get enhanced compensation of Rs.2,44,800/- (3,67,200-1,22,400) under that head. Towards loss

MACA NO. 2391 OF 2013 13

of right incisor teeth claimant is entitled to get Rs.5,000/-. Towards pain and sufferings Tribunal awarded Rs.26,000/-. Taking into account the further treatment and surgery undergone by the appellant/claimant, it can be enhanced as Rs.30,000/-. Deducting the amount already awarded, the claimant is entitled to get enhanced compensation of Rs.4,000/- (30,000-26,000) under that head. Ext.A27 series medical bills are for Rs.30,034/- towards the additional medical expenses. In addition, she is entitled to enhanced compensation for bystander expenses in 2019 at Rs.600 x 4= Rs.2,400/-. In the result, appeal is allowed in part by enhancing compensation to Rs.2,98,234/- rounded to Rs.2,98,250/- (Rupees two lakh ninety eight thousand two hundred fifty only) (Rs.12,000+2,44,800+5,000+4,000+30,034+2,400) which will carry interest @ 7.5% per annum from the date of petition excluding the period of delay of 313 days in filing the appeal. 3rd 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

deducting the liability of the appellant/claimant towards balance MACA NO. 2391 OF 2013 14

court fee. 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

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