

Aboobacker and Another vs Manikandan and Others

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Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/3123/2009

Appellant : Aboobacker and Another

Respondent : Manikandan and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 MACA NO. 3123 OF 2009 AGAINST THE ORDER/JUDGMENT IN OPMV 1260/1998 OF MOTOR ACCIDENT CLAIMS TRIBUNAL , PALAKKAD APPELLANT/S: 1 ABOOBACKER S/O.VEERANKUTTY @ VELLATHAYI, THENODU HOUSE, VAVULLIAPURAM AMSOM & DESOM, ALATHUR TALUK, PALAKKAD DISTRICT. 2 BEEPATHUKUTTY, W/O.ABOOBACKER THENODU HOUSE, VAVULLIAPURAM AMSOM & DESOM, ALATHUR TALUK, PALAKKAD DISTRICT. BY ADVS. SRI.NAGARAJ NARAYANAN SRI.SAIJO HASSAN SRI.A.S.SABU RESPONDENT/S: 1

MANIKANDAN,S/O.MUTHUSWAMY CHETTIAR KARUNANIDHI
NAGAR, VALPARAI. 2 K.C.RANGARAJ, S/O.CHINNA THURAI
KARUVANTHoola, CHITTUR. 3 UNITED INDIA INSURANCE
COMPANY LIMITED POLLACHI. BY ADV P.K.MANOJKUMAR THIS
MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 28.02.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.S.DIAS, J.

===== Dated this the
28th day of February 2022.

JUDGMENT

The appellants were the supplemental petitioners 2 and 3 in OP (MV) No.1260/1998 on the file of the Motor Accident Claims Tribunal, Palakkad. The respondents in the appeal were the respondents before the Tribunal. The parties are, for the sake of convenience, referred to as per their status in the claim petition.

2. The first petitioner - Shamsudeen.A had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the injuries sustained to him in an accident on 1.2.1998. Pending the claim petition, the original petitioner died on 13.9.2004 and the appellants were impleaded as supplemental petitioners 2 and 3. It was the case of the petitioners that, on 1.2.1998, while the

original petitioner was riding his motorcycle along the Vazhachal - Valpara road, a lorry bearing registration No.KLW/2691, driven by the first respondent in a rash and negligent manner, hit the motorcycle of the original petitioner. The original petitioner sustained injuries and was treated as an inpatient for a period of 29 days. The second respondent was the owner and the third respondent was the insurer of the lorry. The original petitioner was employed as a Sales Executive in Abstars Chemical Industries, Bombay, and was earning a monthly income of

Rs.5,000/- . Hence, the petitioners claimed a compensation of Rs.5,00,000/- from the respondents.

3. The respondents 1 and 2 did not contest the proceeding and were set ex parte.

4. The third respondent/insurer had filed a

written statement contending that the accident occurred due to the negligence of the original petitioner. It was also stated that the compensation claimed was excessive.

5. The petitioners had produced and marked Exts A1 to A9 in evidence. The respondents did not let in any evidence.

6. The Tribunal, after analysing the pleadings and materials on record, allowed the claim petition, in part, by permitting the petitioners to recover from the third respondent an amount of Rs.1,10,873/- with interest and cost of Rs.300/-.

7. Dissatisfied with the quantum of compensation awarded by the Tribunal, the supplemental petitioners 2 and 3 are in appeal.

8. Heard; Sri.Nagaraj Narayanan, the learned counsel appearing for the appellants/petitioners 2 and 3 and Sri.P.K Manoj Kumar, the learned counsel appearing for the third respondent/insurer.

9. The sole point that emanates for consideration in the appeal is whether the quantum of compensation awarded by the Tribunal is reasonable and just. Negligence and liability

10. Ext A4 charge-sheet filed by the Police proves that the accident occurred due to the negligence

of the first respondent. Indisputably, the second respondent was the owner and the third respondent was the insurer of the lorry. The third respondent has also not proved that the second respondent had violated the insurance policy conditions. Therefore, the third respondent is to indemnify the liability of the second respondent arising out of the accident. Notional Income

11. The petitioners had claimed that the original petitioner was employed as a Sales Executive in Abstars Chemical Industries, Bombay, and was earning a monthly income of Rs.5,000/-. For the want of materials, the Tribunal fixed the notional monthly income of the original petitioner at Rs.1,500/-.

12. The Hon'ble Supreme Court in Chameli Devi & Ors vs Jivrail Mian and Ors [2019 KHC 5352] has fixed the notional monthly income of a skilled labourer in the year 2001 at Rs.5,000/-.

13. Following the yardstick in the above-mentioned

decision and considering the fact that the accident occurred in the year 1998, I re-fix the notional monthly income of the original petitioner at Rs.2,500/-. Loss of earnings

14. The Tribunal had found that the original petitioner was indisposed for a period of four months. I

confirm the said finding. However, in view of the re-fixation of the notional monthly income of the original petitioner at Rs.2,500/-, I award the petitioners a further amount of Rs.4,000/- under the said head. Pain and sufferings and Loss of amenities

15. It is proved and established that the original petitioner was treated as an inpatient for a period of 29 days and he was indisposed for a period of four months. Therefore, I hold that the petitioners are entitled to a further amount of Rs.7,000/- under the head 'pain and sufferings' and Rs.7,000/- under the head 'loss of amenities'. Other heads of compensation

16. With respect to the other heads of claim, I find

that the Tribunal has awarded reasonable and just compensation. In the result, the appeal is allowed, in part, by enhancing the compensation by a further amount of Rs.18,000/- (Rupees Eighteen Thousand only) (Rs.4,000/- towards 'loss of earnings' + Rs.7,000/- towards 'pain and sufferings' + Rs.7,000/- towards 'loss of amenities') with interest at the rate of 6% per annum on the enhanced

compensation from the date of claim petition till the date of realisation, after deducting interest for a period of 134 days, i.e., the period of delay in filing the appeal and as ordered by this Court on 16.11.2021 in C.M Appln No.1/2009 and a cost of Rs.5,000/-. The third respondent is ordered to deposit the enhanced compensation with interest and cost before the Tribunal within a period of sixty days

from the date of receipt of a certified copy of
accordance with law. Sd/- sks/2.3.2022 C.S.DIAS, JUDGE

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