

Rajilesh vs Ratheesh

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Court : Kerala

Decided On : Jan-03-2022

Judge : Honourable Mr. Justice T.R.Ravi

Appeal No. : MACA/3383/2014

Appellant : Rajilesh

Respondent : Ratheesh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI MONDAY,
THE 3RD DAY OF JANUARY 2022 / 13TH POUSHA, 1943 MACA NO.
3383 OF 2014 AGAINST THE AWARD DATED 02.01.2007 IN OPMV
746/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, VADAKARA
APPELLANT/PETITIONER: RAJILESH AGED 36 YEARS,
S/O.ASOKAN, RESIDING AT PUTHIYA PURAYIL HOUSE,
THUVAKODE P O, KOYILANDY-673304 BY ADVS. SRI. ZUBAIR
PULIKOOL SMT.SUMA A.GAFOOR RESPONDENTS/RESPONDENTS:

1 RATHEESH P., AGED 31 YEARS, S/O.NARAYANAN NAIR,
EDAKKULAM, KOYILANDY-673306, (R.C. OWNER CUM DRIVER OF

KL-11-9-7779 MOTOR CYCLE) 2 THE NEW INDIA ASSURANCE CO LTD BRANCH OFFICE, P B NO I, THRIPIYUR BUILDING, EAST NADAKKAVU CALICUT, PIN-673011 BY ADVS. SRI.P.V.JEEVESH SRI.P.JAYASANKAR SRI.P.JAYASANKAR SRI.N.S.NAJEEB THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD 07.10.2021, THE COURT ON 03.01.2022 DELIVERED THE FOLLOWING:

T.R. RAVI, J.

Dated this the 3rd day of January, 2022

JUDGMENT

On 23.2.2004, due to the negligent driving of the motorcycle

in which the appellant was travelling as a pillion rider, the appellant fell down and sustained injuries. He was taken to Baby Memorial Hospital, Kozhikode where he was under treatment till 19.3.2004. In the claim petition filed by the appellant, the Tribunal granted a compensation of Rs.1,79,973/-. The appeal has been filed claiming enhancement.

2. Heard the counsel for the appellant and the respondent.

3. The counsel for the appellant contended that the

Tribunal went wrong in exonerating the insurer from the liability on the reason that the policy does not cover pillion riders and that gratuitous passengers are not covered by the policy. It is seen from Exhibit B1 policy that it is a package policy covering pillion riders. As such, the contention of the appellant is justified and the insurer cannot be exonerated.

4. It is seen from the medical reports that the appellant had sustained diffused brain oedema, fracture of mandible,

zygoma and floor of interior cranial fossa with depression of bone fragment inferiorly into the frontal sinus, fracture of cribriform plate and roof of posterior ethmoid cells, sphenoid wings lateral wall of ethmoid sinus wall of maxillary sinus and right zygoma.

5. The Tribunal fixed a notional monthly income of

Rs.1,500/- and awarded compensation towards loss of earnings and permanent disability on that basis. The accident happened in 2004 and as per the dictum in *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd.*, reported in [AIR 2011 SC 2951], the notional income should have been fixed at least at Rs.4,500/-. The appellant was aged 26 years at the time of the accident and the multiplier of 17 ought to have been applied instead of 18. The counsel also contended that the appellant is entitled to reasonable amount towards future treatment, and enhancement of amounts granted towards pain and suffering and loss of amenities. It is also submitted that the Tribunal went wrong in awarding only 6% towards interest.

6. The counsel for the insurer contended that there is

absolutely no evidence regarding future treatment and hence no amount can be awarded on that count. It is also contended that the interest awarded is reasonable. It is further submitted that the Tribunal has awarded Rs.25,000/- towards pain and suffering and a sum of Rs.8,000/- towards loss of amenities and that the same are also reasonable.

7. On considering the contentions raised by either side, I

am of the opinion that the appellant is entitled to additional compensation and the award passed by the Tribunal has to be modified. The appellant is entitled to an amount of Rs.18,000/- towards loss of earnings and after deducting the sum of Rs.6,000/- awarded by the Tribunal, he is entitled to additional compensation of Rs.12,000/- under that head. The amount to be awarded

towards permanent disability will be Rs.1,37,700/- ($4500 \times 12 \times 17 \times 15\%$). After deducting the sum of Rs.48,600/- awarded by the Tribunal, the appellant will be

entitled to an additional sum of Rs.89,100/- under that head. The amounts awarded under the other heads are just and reasonable and do not require any modification. In the absence of any evidence, no amount can be granted towards future treatment. The Tribunal ought to have awarded 9% interest instead of 6%.

In the result, the appeal is allowed and the appellant is awarded additional compensation of Rs.1,01,100/- (Rupees One Lakh One Thousand One Hundred only) with interest at the

rate of 9% per annum from the date of filing of the claim petition (10.08.2004) till the date of realisation, with proportionate costs. The appellant will also be entitled to interest at the rate of 9% per annum on the amount of Rs.1,79,973/- awarded by the Tribunal. The appeal was filed with a delay of 2800 days. The delay was condoned on condition that the additional compensation if awarded by this Court will not carry interest for the 2800 days. The amount to be deposited by the 2nd respondent shall be excluding interest on the sum of Rs.1,01,100/- for 2800 days. The 2nd respondent shall hence deposit the compensation awarded by the Tribunal and the additional compensation awarded by this Court totalling to Rs.2,81,073/- along with interest at the rate of 9% interest before the Tribunal within two months from the date of receipt of a certified copy of this judgment, after deducting any amount to which the appellant is liable towards balance court fee and legal

benefit fund. The disbursement of the compensation to the appellant shall be in accordance with law. Sd/- T.R. RAVI JUDGE ds

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