

Joshy John vs John

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Court : Kerala

Decided On : Aug-26-2022

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : MACA/2531/2018

Appellant : Joshy John

Respondent : JOHN

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 26TH DAY OF AUGUST 2022 / 4TH BHADRA, 1944
MACA NO.2531 OF 2018 AGAINST THE ORDER/JUDGMENT IN
OPMV 1407/2014 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
IRINJALAKUDA APPELLANT/PETITIONER: JOSHY JOHN S/O.JOHN,
SENTIPOTTAYIL HOUSE, VRT, BALASWARAM COLONY P.O.,
KARINKAYAM, PALAKKAD DISTRICT BY ADV SRI.P.V.CHANDRA
MOHAN RESPONDENTS/RESPONDENTS: 1 JOHN
S/O.MATHAN,8/171, SENTHIPOTTA, KARIMKAYAM P.O., VET,
MANGALAM DAM, ALATHUR,PALAKKAD DISTRICT- 2 JOJY V.L. S/O.
LUKOSE V.A., VATTAKANDATHIL HOUSE, ELAVAMPADAM P.O.,

KIZHAKKUMCHERUY, ALATHUR, PALAKKAD DIST-678 541. 3
NATIONAL INSURANCE CO.LTD., IRINJALAKUDA-680 121
REPRESENTED BY BRANCH MANAGER BY ADV LAL GEORGE THIS
MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 23.08.2022, THE COURT ON 26.08.2022 DELIVERED THE
FOLLOWING: MACA No.2531 of 2018 2

SOPHY THOMAS, J.

----- M.A.C.A No.2531 of 2018
----- Dated this the 26th day of August, 2022

JUDGMENT

This appeal has been preferred by the claimant in OP (MV) No.1407 of 2014 on the file of Motor Accident Claims Tribunal, Irinjalakuda, challenging inadequacy of the compensation awarded.

2. On 15.02.2014 at 6.30 p.m, the appellant met with a road traffic accident while he was pillion riding KL-49D-5960 motorcycle. That motorcycle was ridden by the

2nd respondent in a rash and negligent manner and so he lost control of the vehicle, and it turned down, whereby the appellant sustained serious injuries. He was a 31 year old Supervisor in Kitex Garments, earning monthly salary of Rs14,000/- at the time of accident. He became totally disabled due to the accident and so, he lost his job. He approached the Tribunal claiming compensation of Rs.8,66,000/-. But the Tribunal awarded only Rs.5,73,340/- and it is under challenge in this appeal. MACA No.2531 of 2018 3

3. The 1st respondent was the owner, 2 nd respondent was the rider and the 3rd respondent was the insurer of the offending motorcycle.

4. The accident, injuries as well as policy of the offending vehicle are admitted by the insurer.

5. The Tribunal fixed the monthly income of the appellant as

Rs.8,500/-, though he was earning Rs.14,000/-. But Ext.X1 and X2 coupled with the testimony of PW1 proved his income as Rs.8,500/- and so, the Tribunal is justified in taking his income as Rs.8,500/-. Since he had suffered fracture of right femur, both bones of right leg and punctured wound on the right elbow, he was admitted in hospital for 91 days and even on discharge, he

was having only 75% of flexion of knee. Ext.A8 disability certificate shows 40% disability, but the Medical Board had certified his disability as 22%.

6. Considering the nature of injuries, disability and the

period of hospitalisation, this Court is inclined to take the loss of earning for a period of 12 months. So the appellant is eligible to get Rs.34,000/- more under the head 'loss of earning'.

7. Towards attendant expenses, the appellant was given Rs.300/- per day for 91 days of hospitalisation. Considering the MACA No.2531 of 2018 4

nature of injuries suffered and the disability incurred and also the fact that even after discharge he was in need of an attendant for his day to day affairs, this Court is inclined to award Rs.2,700/- more under the head attendant expenses.

8. Towards pain and sufferings, the appellant is eligible for Rs.25,000/- more considering the duration of treatment and the nature of injuries.

9. Towards loss of amenities, Rs.30,000/- more is awarded

as the appellant had suffered 22% disability with shortening of 2 centimeter of lower limb. Moreover, the patient was dependent on elbow crutches for mobilisation and he was not able to continue his work as a Supervisor as seen from Ext.A8.

10. The disability certificate Ext.A8 further shows that there was bony deformity and swelling over right leg. Difficulty in climbing steps, squatting and sitting on the floor and malunited fracture of both bones of right leg with implants in-situ. So, definitely, he needs treatment in future also with respect to the conditions mentioned in Ext.A8. So, this Court is inclined to award Rs.25,000/- towards future

medical expenses.

11. The compensation awarded under all other heads seems to be just and reasonable and it needs no interference. MACA No.2531 of 2018 5

Head of	Amount	Amount awarded	Difference to
compensation	Loss of Rs.68,000/-	Rs.1,02,000/-	Rs.34,000/-
Attendant	Rs.27,300/-	Rs.30,000/-	Rs.2,700/-
expenses	Pain and	Rs.60,000/-	Rs.85,000/-
sufferings	Loss of Rs.30,000/-	Rs.60,000/-	Rs.30,000/-
amenities	Future - Rs.25,000/-	Rs.25,000/-	medical expenses
Total	Rs.1,85,300/-	Rs.3,02,000/-	Rs.1,16,700/-

12. In the result, the appellant is entitled to get Rs.1,16,700/- (34000+2700+25000+30000+25000) as enhanced compensation. The 3rd respondent/insurer is directed to deposit the

enhanced compensation in the Bank Account of the appellant with interest @ 8% per annum 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 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,

MACA No.2531 of 2018 6 balance court fee and legal benefit fund. This appeal is allowed accordingly. No order as to costs. Sd/- SOPHY THOMAS JUDGE smp

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