

Rajan vs John

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Court : Kerala

Decided On : Dec-01-2021

Judge : Honourable Mr. Justice T.R.Ravi

Appeal No. : MACA/1155/2013

Appellant : RAJAN

Respondent : JOHN

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE T.R.RAVI WEDNESDAY,
THE 1ST DAY OF DECEMBER 2021/10TH AGRAHAYANA, 1943
MACA NO. 1155 OF 2013 AGAINST THE AWARD IN OPMV 410/2005
OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
APPELLANT/PETITIONER:

[RAJAN AGED 53 YEARS S/O.NARAYANAN,KALLURUMPIL HOUSE,
VELLAMTHANAM KARA,UDUMBANNOOR VILLAGE, THODUPUZHA
TALUK]. *(DECEASED) ADDL. A2 & A3 IMPEADED ADDL.A2
VASANTHY, W/O. LATE RAJAN, 53 YEARS, KALLURUMPIL HOUSE,
CHEENIKUZHAKARA P.O., EDAMAUKU KARA, UDUMBANNOOR

VILLAGE, THODUPUZHA TALUK - 685 595. ADDL.A3 RAHUL, S/O. LATE RAJAN, AGED 32 YEARS, KALLURUMPIL HOUSE, CHEENIKUZHAKARA P.O., EDAMAUKU KARA, UDUMBANNOOR VILLAGE, THODUPUZHA TALUK - 685 595. ARE IMPEADED AS ADDITIONAL APPELLANTS A2 AND A3 IN THIS APPEAL, AS PER ORDER DATED

BY ADV SRI T.V.GEORGE RESPONDENTS/RESPONDENTS: 1 JOHN S/O.MATHAI,PULIYATHOOR PUTHENPURAYIL, VELLAMTHANAM KARA,UDUMPANNOOR VILLAGE, THODUPUZHA TALUK-685 554. 2 JOSH.Y.C.J S/O.JOHNNY,CHETTIYAMPURATHU HOUSE, PANNOOR.P.O,THODUPUZHA-685584. 3 STALIN S/O.GOPI,PAREKKAVIL HOUSE,THATTAKUZHA.P.O,THODUPUZHA-685584.. 4 MS.ORIENTAL INSURANCE COMPANY LTD REPRESENTED BY ITS BRANCH MANAGER,JYOTHI SUPER BAZAR,THODUPUZHA-685584. R4 BY ADV SRI.VPK.PANICKER THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29.09.2021, THE COURT ON 01.12.2021 DELIVERED THE FOLLOWING:

T.R. RAVI, J.

Dated this the 1st day of December, 2021

JUDGMENT

On 23.10.2004, when the original claimant was travelling on a motorcycle, he was hit by another motorcycle driven in a rash and negligent manner causing him serious injuries. The original claimant was treated at the Holy Family Hospital, Muthalakodam and Chazhikaattu Hospital, Thodupuzha. He received further treatment from Medical College Hospital, Kolencherry. A claim petition was filed and the Tribunal awarded a sum of Rs.5,01,600/-

as compensation. The original claimant preferred this appeal claiming enhanced compensation. Pending the appeal, the original claimant died and his legal representatives have been impleaded as additional appellants 2 and 3.

2. Heard the learned counsel for the appellants and the learned counsel appearing for the 4th respondent.

3. The deceased was working as a toddy tapper and

claimed experience of 19 years of toddy tapping. He was aged 44 years at the time of accident and he claimed that he was earning a monthly income of Rs.12,500/-. He was a registered member of

the Toddy Workers Welfare Fund Board. His date of birth is 26.02.1960. As a result of the accident, it is submitted that the deceased had contusion in his left eye and suffered a brain injury resulting in removal of a portion of the skull by surgical procedure. Initially, the Tribunal had awarded Rs.1,73,300/- as compensation. The said award was set aside by this Court in its judgment in M.A.C.A.No.686/2009 and the matter was remanded to the

Tribunal for fresh consideration. After the remand, PWs 1 to 4 were examined. PWs 1 and 2 are the Doctors, PW4 is the Welfare Fund Inspector of the Toddy Workers Welfare Fund Board and PW3 is the injured. Ext.A14 discharge summary shows that the appellant had suffered the following injuries; Saggital sinus injury B1 frontal epidural hematoma left > right Traumatic optic neuropathy right eye.

4. It can be seen from Ext.A14 that emergency craniotomy

and EDH evacuation and sinus bleeding control was done under anesthesia. Dental consultation was done for complex fracture of zygomaticomaxillary and ophthalmologic consultation was done for traumatic optic neuropathy. The counsel for the appellants contended that the Tribunal went wrong in taking the income at Rs.6,250/- per month as there was evidence to show that he was earning Rs.12,500/- per month. The above claim regarding income is also supported by the version of PW4, who is the Welfare Fund Inspector. In the absence of any contra evidence, the Tribunal ought to have accepted the said amount as the

income.

5. The learned counsel for the insurer submitted that the

Tribunal had fixed Rs.6,250/- as wages on the basis of Ext.A13 which showed that the income earned during the period 2004-05 was Rs.75,000/-. However, what was failed to be noticed was that the said Rs.75,000/- relates to the period upto 23.10.2004 and the income for the subsequent six months has not been taken into account, since by then, the 1st appellant had already suffered the accident and was not able to continue his job.

6. The counsel for the appellants next submitted that the monthly income ought to have been enhanced for the purpose of

providing for future prospects. Reliance is placed on the judgment

in National Insurance Company Ltd. v. Pranay Sethy & Ors. reported in [2017 (5) KHC 350 (SC)] rendered by a Constitution Bench of the Hon'ble Supreme Court wherein it was held that an addition of 30% towards future prospects has to be made if the deceased is between 40 to 50 years. Since the case on hand cannot be treated as a case of a death claim, I am of the opinion that 25% has to be added towards future prospects having regard to the age of the deceased at the time of the accident. The monthly income for the purpose of calculating permanent disability has to be hence 15,625/-. Hence the appellant will be entitled to an amount of Rs.10,50,000/- ($15625 \times 12 \times 40\% \times 14$) towards compensation for permanent disability. After deducting the amount of Rs.3,30,000/- awarded by the Tribunal, the appellant will be entitled to an additional compensation of Rs.7,20,000/- under that head. The loss of earning for six months on the basis of the income of Rs.12,500/- will be Rs.75,000/-. After deducting Rs.37,500/- granted by the Tribunal, the appellant will be entitled to an additional sum of Rs.37,500/- under that head. Even though the counsel for the appellants had claimed that the appellants 2 and 3 are entitled to loss of consortium, since the claims is treated as a claim of injury, no amount is being awarded under that head.

7. In the result, the appeal is allowed and the appellants 2 and 3 are awarded an enhanced compensation of 7,57,500/-

(Rupees Seven Lakhs Fifty Seven Thousand Five Hundred only) with interest at the rate of 9% per annum from the date of filing of the claim petition (03.06.2005) till the date of realisation,

with proportionate costs. The 4th respondent insurer shall deposit the additional compensation granted in this appeal along with the interest and proportionate costs, 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 appellants 2 and 3 are liable towards balance court fee and legal benefit fund. The disbursement of the compensation to the appellants 2 and 3 shall be in accordance with law.

Sd/- T.R. RAVI JUDGE dsn

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