

Gajapathi vs Jayachandran

Gajapathi vs Jayachandran

SooperKanoon Citation : sooperkanoon.com/1639005

Court : Kerala

Decided On : Jun-25-2021

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/1316/2014

Appellant : Gajapathi

Respondent : Jayachandran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 25TH DAY OF JUNE 2021 / 4TH ASHADHA, 1943 MACA NO. 1316 OF 2014 AGAINST THE ORDER/JUDGMENT IN OP(MV) 252/2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALA APPELLANT/PETITIONER: GAJAPATHI, S/O.P.PARAMASIVAN, KAMACHI VILASAM HOUSE, VANDANMEDU P.O., SWAMY COLONY, IDUKKI DIST. BY ADVS. SRI.THOMAS ABRAHAM (NILACKAPPILLIL) SRI.MANU TOM RESPONDENTS/RESPONDENTS: 1 JAYACHANDRAN S/O RATHINAM, 13/574, CHOKKANADU ESTATE, ETTUMURI LEYAM, D.NO.3, MUNNAR P.O., MUNNAR KARA, KDH VILLAGE, IDUKKI DIST. - 685 612. 2 THE MANAGER, THE NEW INDIA

INSURANCE CO. LTD., MUNICIPAL COMPLEX, PALA, KOTTAYAM DIST. - 686 575. BY ADVS. S.MANUKUMAR SMT.RAJI T.BHASKAR RAJI T.BHASKAR M.V.RAJENDRAN NAIR OTHER PRESENT: SMT RAJI T BHASKAR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 25.06.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 1316 OF 2014
2

JUDGMENT

The appellant was the petitioner in OP(MV) No.252 of 2011 on the file of the Motor Accidents Claims Tribunal, Pala. The respondents in the claim petition are the respondents in the appeal.

2. The facts in the claim petition, relevant for the determination of the appeal are: on 10.10.2010, while the

appellant was travelling on a motorcycle bearing Reg.No.KL37/7661 from Puliyanmala to Vandanmedu, a car bearing Reg.No.KL-41/A 2731 (offending vehicle) owned and driven by the 1st respondent in a rash and negligent manner hit on the motorcycle of the petitioner. The petitioner fell down and sustained injuries. The offending vehicle was insured with the 2 nd respondent.

The petitioner was a JCB operator by profession and

respondents were jointly and severally liable to pay compensation to the petitioner, which he quantified at Rs.2,91,000/-, but limited to 1,70,000/-.

3. The 1st respondent did not contest the proceedings and was set ex parte.

4. The 2nd respondent filed a written statement, admitting the offending vehicle had a valid insurance policy. However, it was contended that the accident occurred due to the negligence on the part of the

appellant. It was denied that the appellant was a JCB operator and that he had a valid licence to drive a JCB. It was also contended that the compensation claimed

under the different heads was excessive.

5. The appellant was examined as PW1 and Exts.A1 to A9 in evidence. Ext.X1 disability certificate issued by the Medical College Hospital, Kottayam was MACA NO. 1316 OF 2014 4 marked as Ext.X1.

6. The Tribunal, after analysing the pleadings and

materials on record, by the impugned award allowed the claim petition in part, by permitting the appellant to realise an amount of Rs.58,750/- with interest @ 7.5 % per annum from the date of filing of the claim petition till the date of realization along with proportionate costs. The 2nd respondent was directed to pay the compensation amount.

7. Dissatisfied with the quantum of compensation awarded by the Tribunal, the is in appeal.

8. Heard, the learned counsel appearing for the appellant/petitioner and the learned counsel appearing for the 2nd respondent.

9. The question that emanates for consideration in this appeal is whether the quantum of compensation MACA NO. 1316 OF 2014 5 awarded by the Tribunal is reasonable and just.

10. A constitution Bench of the Hon'ble Supreme

Court in National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680), has held that Section 168 of the Motor Vehicles Act, 1988, deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standards. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non- violation of the principle of equitability.

11. Ext.A3 final report filed by the Vandanmedu

Police Station after investigation substantiates that the accident occurred solely due to the negligence on the part of the first respondent. Undisputedly, the

offending vehicle was insured with the 2nd respondent. Therefore, MACA NO. 1316 OF 2014 6 the 2nd respondent is liable to indemnify the 1st respondent and pay the compensation to the petitioner.

12. The principal area of dispute in this appeal is with regard to the fixation of notional income of the appellant.

13. Although the appellant had claimed that he was

a JCB operator by profession earning a monthly income of Rs.18,000/- and producing Ext.A8 certificate allegedly issued by his employer to prove his salary, he had in his cross-examination, timely admitted that he did not possess a valid driving licence to operate a JCB. Ext.A9 driving licence produced by the appellant shows that he had only a licence to drive a light motor vehicle. Moreover, Ext.A8 employment certificate was not proved

through its author.

Therefore, the Tribunal fixed the notional

rejection of the appellants claim that he was a JCB

operator by the Tribunal cannot be found fault. Nevertheless, considering that the appellant was driver by profession and that the accident occurred in the year 2010 and following the law laid down by the Supreme Court in Pushkar Mehra v. Brij Mohan kushwaha and others (2015 (12) SCC 688) wherein the Hon'ble Supreme Court has fixed the notional income of a skilled labourer in the year 2004 at Rs.7,020/- per month, I am of the considered opinion that the appellants notional income can safely be fixed at Rs.10,000/- per month.

Hence, I fix the appellants notional income at Rs.10,000/- per month. Loss of earnings

14. In view of the refixation of the notional income of the appellant, his loss of earnings is refixed at MACA NO. 1316 OF 2014 8 Rs.20,000/-. Loss of amenities

15. Even though the appellant had claimed

compensation under the head loss of amenities, no amount was awarded to the appellant. Considering that the appellant has suffered several injuries as seen from Ext.A5 Wound Certificate and he has suffered disability of 10% as certified by the Govt. Medical College Hospital, Kottayam as per Ext.X1, I am of the opinion that the appellant is entitled for compensation under the head loss of amenities at Rs.10,000/-. Loss due to disability

16. The Tribunal had referred the appellant to the Medical Board of the Medical College Hospital, Kottayam, who certified that the appellant has a disability of 10%. The Tribunal however fixed the MACA NO. 1316 OF 2014 9 disability of the appellant at 2%, for the reason that the disability certificate was not proved by the author of the certificate.

17. In *Rajkumar v. Ajaykumar* (2011 1 KLT 620

SC), the Honble Supreme Court has held that the proper course to assess the disability of an injured is to refer the person to a duly constituted medical board or by

examining the doctor who issued the permanent disability certificate. Similarly, in *Union of India and another v. Talwinder Singh* (2012 5 SCC 480), the Honble Supreme Court has held that court should not normally interfere with the opinion of experts and that it would be safe for the Courts to leave the decision to the experts, who are more familiar with the problems than the courts to express its general opinion.

18. In light of the law laid down in the above cited

MACA NO. 1316 OF 2014 10 decisions and considering the fact that a duly constituted medical board - the expert body - has certified that the appellant has a disability of 10%, I am of the definite opinion that the course adopted by the Tribunal to substitute the wisdom of the board, by stating that the appellant has only 2% disability for the want of examination of the author of Ext.X1, is wrong and erroneous. Therefore, I set aside the said finding and fix the appellants disability at 10%.

19. In light of the re-fixation of the notional income

of the appellant and the percentage of his disability at 10%, I am of the firm opinion that the appellant is entitled for compensation on account of 'loss due to disability' at Rs.2,16,000/- instead of Rs.21,600/- fixed by the Tribunal.

20. With respect to the other heads of MACA NO. 1316 OF 2014 11

compensation, namely; transport to hospital, extra nourishment, treatment expenses, bystander expenses and pain and sufferings, I find that the Tribunal has awarded reasonable and just compensation.

21. On an over all re-appreciation of the pleadings and materials on record, the law laid down in the aforesaid decisions, I am of the firm opinion that the appellant/petitioner is entitled for enhancement of compensation as modified and recalculated above and given in the table below for easy reference.

Head of claim	Amount	Amounts Awarded by modified and the Tribunal recalculated (in Rs.)
Loss of earnings	10,000/-	20,000/-
Transportation	2,500/-	2,500/-
Extra nourishment	1,000/-	1,000/-
MACA NO. 1316 OF 2014 12 Treatment	8,250/-	8,250/-
expenses Bystander	400/-	400/-
expenses Pain and sufferings	15,000/-	15,000/-
Loss of amenities	- 10,000/-	- 10,000/-
Loss due to disability	21,600/-	2,16,000/-
Total	58,750/-	2,73,150/-

In the result, the appeal is allowed in part, by enhancing the compensation by a further amount of Rs.2,14,400/- with interest at the rate of Rs.7.5% per annum on the enhanced compensation from the date of petition till the date of realisation along with proportionate costs. The 2nd respondent shall deposit the enhanced compensation amount awarded in the appeal

MACA NO. 1316 OF 2014 13 before the Tribunal with interest and proportionate costs within a period of two months from the date of receipt of a certified copy of this judgment after deducting the liability of the appellant, if any, towards balance court fee and legal benefit, if any. The Tribunal shall disburse the enhanced compensation to the appellant/petitioner in accordance with law.

Sd/- C.S.DIAS, JUDGE pm

