

Rajan John vs Raju N. John

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Court : Kerala

Decided On : Mar-04-2021

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : MACA/127/2008

Appellant : Rajan John

Respondent : Raju N. John

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 04TH DAY OF MARCH 2021 / 13TH PHALGUNA,
1942 MACA.No.127 OF 2008(H) AGAINST THE AWARD IN OPMV
592/2002 DATED 22-12-2006 OF ADDITIONAL DISTRICT COURT &
ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL ,ALAPPUZHA.
APPELLANT/S: RAJAN JOHN, S/O T C YOHANNAN, 'PALLAVI', X/792,
ZILLA COURT WARD, ALAPPUZHA., (PERMANENT ADDRESS:
THALAPPILAMVELIL, KODAL P.O., PATTANAMTHITTA) BY ADV.
SRI.P.VIJAYARAGHAVAN RESPONDENT/S:

1 RAJU N. JOHN, S/O VYOHANNAN NOOROLIL VEEDU, VENMANI
VILLAGE, CHENGANNUR. 2 THE MANAGING DIRECTOR KERALA

STATE ROAD TRANSPORT CORPORATION (KSRTC),
THIRUVANANTHAPURAM. 3 THE NATIONAL INSURANCE CO. LTD.
VAZHUTHAKKAD, THIRUVANANTHAPURAM. R3 BY ADV.
SRI.E.M.JOSEPH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING
BEEN FINALLY HEARD ON 02-03-2021, THE COURT ON 04-03-2021
DELIVERED THE FOLLOWING: MACA.No.127 OF 2008(H) 2
P.V.KUNHIKRISHNAN, J ----- M.A.C.A.
No.127 of 2008 ----- Dated this the 4th day of
March, 2021

JUDGMENT

The appellant is the claimant in O.P.(M.V.) No.592/2002 on the file of the Motor Accidents Claims Tribunal, Alappuzha. The above claim petition was filed under Sec.166 of the Motor Vehicles Act.

2. The short facts are like this : While the appellant was driving his car along Alappuzha-

Kollam National Highway on 1.5.2001, at about 7 pm in the evening, he met with an accident at Thookkenkulam Junction. It is alleged that a KSRTC bus bearing No.KL-15/3057 driven by the 1 st respondent came from the opposite direction, hit the right front portion of the car and as a result of this, the appellant/petitioner sustained very injuries. According to the claimant, the accident occurred because of the rash and negligent driving of the 1 st respondent. Therefore, respondents are liable to pay compensation.

2. To substantiate the case, 11 documents were produced and

the same is marked as Exts.A1 to A11. Based on these documents and pleadings, the Tribunal passed an award of Rs.2,14,505/-. Aggrieved by the quantum of compensation, this appeal is filed.

3. Heard counsel for the appellant and the counsel for the MACA.No.127 OF 2008(H) 3 respondents.

4. The counsel for the appellant submitted that the Tribunal

has not considered Ext.A7 disability certificate. The Tribunal has not allowed the appellant to adduce oral evidence to substantiate his case. According to him, he sustained partial permanent disability of 10%. He wants to adduce evidence. Even now, he is suffering from different disability even though the accident was happened in 2001. The disability certificate was produced in 2006. According to the counsel, if an opportunity is given to the appellant to adduce further evidence, he will be able to prove that there is disability and he is entitled more compensation under different heads.

5. The counsel for the respondents opposed the same. The counsel submitted that after considering the available evidence, the Tribunal passed the award and there is nothing to interfere with the impugned award.

6. Considering the entire facts and circumstances of this

case, I think an opportunity can be given to the appellant. The appellant says that he was working in Milma as an Asst. Manager. He was in the hospital for 75 days. According to him, he sustained very serious injuries. Even now, he is suffering from different disabilities. The grievance of the appellant is that he was not able to adduce oral evidence because the court was not allowing the same in injury cases. If the appellant want to adduce evidence, the Tribunal ought to have

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granted an opportunity to adduce evidence. In the facts and circumstances, I think this appeal can be allowed and the case can be remanded to the Tribunal for fresh consideration, after giving opportunity to adduce further evidence to both sides. There can be a time limit also to dispose the claim petition because the claim petition was filed in the year 2002.

Therefore, this MACA is allowed. 1) Order dated 22.12.2006 in O.P.(M.V.) No.592/2002 is set aside and the Motor Accidents Claims Tribunal, Alappuzha is directed to restore O.P.(M.V.) No.592/2002. 2)

The Tribunal will allow both parties to adduce further evidence, if any, oral and documentary. 3) If an application is filed for examination of the appellant by a Medical Board, the Tribunal will allow the same. 4) The Tribunal will dispose the case as expeditiously as possible, at any rate, within 4 months from the date of receipt of a copy of this judgment.

The parties will appear before the Tribunal on 31.3.2021. sd/-
P.V.KUNHIKRISHNAN JUDGE SKS

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