

Udayan vs Venugopal K.K. and Others

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Court : Kerala

Decided On : Aug-31-2021

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/3186/2009

Appellant : Udayan

Respondent : Venugopal K.K. and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943 MACA NO. 3186 OF 2009 AGAINST THE AWARD DATED 29.06.2009 IN OP(MV)NO.452/2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL , IRINJALAKUDA, THRISSUR APPELLANT/PETITIONER: UDAYAN, S/O. KUNNISSERY KORAN, KALLETUMKARA DESOM, VILLAGE, THRISSUR DISTRICT. BY ADV SRI.V.BINOY RAM RESPONDENTS/RESPONDENTS: 1 VENUGOPAL K.K.(DELETED), KALAPPATTIL KANNA, THOMMANA DESOM, KADUPPASSERY VILLAGE, THRISSUR DISTRICT. 2 SAHAD.E.A., S/O.EDAKKATTUPARAMBIL ABDUL RAHMAN, PONJANAM P.O.,

KATTOOR, THRISSUR DISTRICT. 3 THE BRANCH MANAGER,
NATIONAL INSURANCE CO.LTD., MAIN ROAD, IRINJALAKUDA. *
DELETED THE FIRST RESPONDENT IS DELETED FROM THE
PARTY

ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER

DATED 8.7.2021 IN I.A.NO.442/2018. BY ADV SMT.DEEPA GEORGE THIS
MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
31.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -
:2:- Dated this the 31st day of August, 2021

JUDGMENT

The appellant was the petitioner in O.P.

(MV)No.452/2006 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda.
The present respondents 1 and 2 were the respondents 2 and 3 before the
Tribunal. Even though the appellant had impleaded the first respondent before the
Tribunal as the first respondent in this appeal, at the instance of the appellant, the
first respondent was deleted from the

party array as ordered by this Court in I.A.No.442/2018. Therefore, the parties are,
for the sake of convenience, referred to as per their status in the claim petition
before the Tribunal.

2. The facts in brief, relevant for the

determination of the appeal, are: On 08.03.2006, while the petitioner was travelling
as pillion on motorcycle bearing registration No.KL-8/A 9792, driven by the -:3:-
first respondent through the Irinjalakuda-Chalakudy road, the motorcycle capsized
due to the negligence of the first respondent. The petitioner sustained serious
injuries and was taken to the Taluk Headquarters Hospital, Irinjalakuda and
thereafter,

referred to Irinjalakuda Co-operative

respondent. The petitioner was a painter by profession and earning a monthly income of Rs.5,000/-. Hence, the petitioner claimed a total compensation of Rs.2,50,500/- from the respondents under Section 166 of the Motor Vehicles Act, 1988, which was limited to Rs.2,00,000/-.

3. The first respondent filed a written statement denying the allegations in the claim petition. The second respondent did not contest the proceeding.

4. The third respondent filed a written -:4:- statement contending that as the petitioner was a pillion rider, he was not covered by the insurance policy.

5. The Tribunal, after analysing the pleadings

and materials on record, namely Exts.A1 to A8 and B1 allowed the claim petition in part, by permitting the petitioner to realise an amount of Rs.60,100/- with interest at the rate of 7% per annum from the date of petition till the date of realisation and proportionate costs. The third respondent was directed to pay the compensation amount.

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

7. Heard; Sri. K. Binoy Ram V., the learned counsel appearing for the appellant/petitioner and Smt. Deepa George, the learned counsel appearing for the third respondent/insurer. -:5:-

8. The sole question that emerges for consideration in the appeal is whether the quantum of compensation awarded by the Tribunal is reasonable and just?

9. As per Ext.A2 charge-sheet filed by the

Irinjalakuda police in Crime No.206/2006, it is proved that the accident occurred due to the negligence of the first respondent. Undisputedly, the second respondent was the owner and the third respondent was the insurer of the motorcycle. Therefore, the third respondent is liable to indemnify the first respondent of his liability to pay compensation, especially since Ext.B1 is a comprehensive insurance policy.

10. The petitioner had claimed that he was aged 43 years at the time of accident and was a painter by profession. Although he claimed an amount of Rs.5,000/- as his monthly income, the Tribunal fixed his notional income at Rs.2,000/- per month, for want -:6:- of materials.

11. In Ramachandrappa v. Manager, Royal

Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236], the Hon'ble Supreme Court has fixed the notional income of a coolie worker in the year 2004, at Rs.4,500/- per month. Notional income:

12. Following the ratio in the afore-cited decision

and keeping in mind the fact that the accident occurred in the year 2006 and the petitioner was a painter by profession, I re-fix his notional income at Rs.5,000/- per month. Loss of earnings:

13. It is on record that the petitioner had sustained a fracture on his left femur. He was found to be incapacitated for a period of three months, which I accept and confirm.

14. In view of the re-fixation of the notional -:7:- income of the petitioner at Rs.5,000/- per month, I re-fix his 'loss of earnings' at Rs.15,000/- instead of Rs.6,000/- awarded by the Tribunal. Loss due to disability

15. The petitioner had produced Ext.A6 disability

certificate to prove that he has a permanent disability of 10%. The Tribunal, after seeing the petitioner came to a conclusion that he is not disabled from doing any work. Therefore, the Tribunal refused to accept the disability assessed in Ext.A6.

16. In paragraph No.12 in Rajkumar v. Ajayakumar [2011(1) KLT 620(SC)], the Honourable Supreme Court has categorically held that, if the Tribunal is dissatisfied with the disability assessed by

a Doctor, then the Tribunal has to refer the injured/claimant to a duly constituted Medical Board. Otherwise, the Tribunal is bound to accept the disability assessed

by the Doctor in the medical -:8:- certificate.

17. In the instant case, the Tribunal after seeing

the petitioner felt that the petitioner does not have any disability. Moreover, it is seen that the respondents have not objected to the marking of Ext.A6. Hence, it is only to be assumed that Ext.A6 has been marked in evidence with the consent of the parties. Therefore, the respondents cannot now take a volte face and contend that Ext.A6 is not admissible.

18. As the finding of the Tribunal is in total disregard to the law laid down in Rajkumar(supra), I set aside the said finding and accept the disability of the petitioner, as certified in Ext.A6, at 10%.

19. In view of the re-fixation of 'notional income' of the petitioner at Rs.5,000/- per month, the 'multiplier' being '14', I fix the compensation for 'loss of disability' at Rs.1,68,000/-.

20. With respect to the other heads of -:9:- compensation, I find that the Tribunal has awarded reasonable and just compensation.

21. On an overall re-appreciation of the pleadings, materials on record and the law laid down in the afore-cited decisions, I am of the definite opinion that the appellant/petitioner is entitled for enhancement of compensation as modified and re- calculated above and given in the table below for easy reference. Sl.No Head of claim Amount Amounts

Sl.No	Head of claim	Amount	Amounts
1	Loss of earnings	6,000	15,000
2	Transport expenses	500	500
3	Bystander expenses	2,000	2,000
4	Medical expenses	25,600	25,600
5	Pain and sufferings	15,000	15,000
6	Loss of amenities	6,000	6,000
7	Disfiguration	5,000	5,000
8	Loss due to disability	1,68,000	1,68,000
	Total	60100	2,37,100

22. Even though the appellant had only claimed an amount of Rs.2,00,000/- as compensation, going by the law laid down in Nagappa v. Gurudayal Singh

[2003(1) KLT 115 (SC)] and Rajesh v. Rajbir Singh[2013(3) KLT 89 (SC)], wherein the Hon'ble Supreme Court has held that there is no restriction in awarding more compensation than what is claimed in the claim petition because reasonable and just compensation is to be awarded. Hence, I feel justified in awarding the above compensation. In the result, the appeal is allowed, by enhancing the compensation by a further amount of Rs.1,77,000/- with interest on the enhanced compensation at the rate of 6% per annum from the date of petition till the date of deposit and a cost of Rs.3,000/-. The second respondent in the :-11:-

appeal/insurer is directed to deposit the enhanced compensation with interest and costs before the Tribunal within a period of two months from the date of receipt of a certified copy of this judgment. The Tribunal shall disburse the enhanced compensation to the appellant/petitioner, in accordance with law, after deducting his liability, if any, towards court fee.

All pending interlocutory applications will stand closed. Sd/- C.S.DIAS,JUDGE
DST //True copy/ P.A.To Judge The figure shown as Rs.1,68,000/- in Paragraph 19 as well as Column No.8 of Paragraph 21 of the

Judgment is substituted as Rs.84,000/-. The figure of

Rs.2,37,100/- shown as total under Column No.8 is corrected as Rs.1,53,100/- and the figure Rs.1,77,000/- in the operative portion of the judgment is corrected - :12:- as Rs.93,000/- as per order dated 05.04.2022 in IA No.1/2021 in MACA 3186/2009. Sd/- DEPUTY REGISTRAR

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