

Sudakaran vs Anilkumar and Two Others

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Court : Kerala

Decided On : Oct-31-2019

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : MACA/485/2008

Appellant : Sudakaran

Respondent : Anilkumar and Two Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
THURSDAY, THE 31ST DAY OF OCTOBER 2019 / 9TH KARTHIKA,
1941 AGAINST THE AWARD IN OPMV 1314/1998 DATED 18-10-2007
OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,PATHANAMTHITTA
APPELLANT/PETITIONER: SUDAKARAN S/O. RAJAPPAN,
OZHUKEEPARA VEEDU, MAROOR MURI,, ENADIMANGALAM
VILLAGE, ADOOR TALUK, PATHANAMTHITTA, DISTRICT. BY ADVS.
SRI.K.SHAJ SRI.B.BALRAJ SRI.SAJJU.S
RESPONDENTS/RESPONDENTS:

1 ANILKUMAR,S/O. SADANANDAN, PUTHENPURAYIL VEEDU,
VANVILA, KARAVOOR. 2 UDAYABHANU S/O.SUKUMARA PANICKER

SUKUMARAM VEEDU, PERUNGALA P.O., KAYAMKULAM VILLAGE, KAYAMKULAM. 3 BRANCH MANAGER UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE,, T.M. BUILDING, BANK ROAD, KAYAMKULAM. R1 BY ADV. SRI.P.JACOB MATHEW R1 BY ADV. SMT.S.JAYASREE OTHER PRESENT: SMT.P.JACOB MATHEW, SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 31.10.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant is the claimant in O.P(MV)No.1314 of 1998 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta, a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the injuries sustained by him in a motor accident, which occurred on 10.07.1997, while he was travelling in a bus bearing registration No.KRA-136 driven by the first respondent, owned by the second respondent and insured with the third respondent. At the place of accident, the bus hit on a compound

wall on the side of the road and capsized. In the accident, the appellant/claimant and others sustained injuries. Alleging that the accident occurred due to the rash and negligent driving of the bus by the first respondent driver, claim petition was filed before the Tribunal claiming a total compensation of Rs.2,00,000/-, under various heads.

2. Before the Tribunal, the first and second respondents remained

absent and they were set ex parte. The third respondent insurer filed written statement admitting insurance coverage of the vehicle involved in the accident; however, denying negligence alleged against the 1 st respondent driver. The age, occupation, monthly income, etc. stated in the claim petition were denied and it was contended that the compensation claimed is highly excessive.

3. Before the Tribunal, Exts.A1 to A11 series were marked on the side of the appellant/claimant. Both sides have not chosen to adduce any oral evidence.

4. After considering the pleadings and materials on record, the

Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the bus by the 1st respondent driver. Since insurance coverage of the said vehicle was not in dispute, the insurer was held liable to indemnify the insured. Under various heads, the Tribunal awarded a total compensation of Rs.33,000/- together with interest at the rate of 9% per annum from 17.11.1998 till realisation, with proportionate cost of Rs.350/-and the insurer was directed to satisfy the award.

5. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant is before this Court in this appeal.

6. Heard the learned counsel for the appellant/claimant and also

the learned Standing Counsel for the 3rd respondent insurer. Since insurance coverage of the vehicle is admitted by the insurer, service of notice on the first respondent driver and second respondent owner was dispensed with, by the order of this Court dated 17.10.2019.

7. The issue that arises for consideration in this appeal is as to whether the appellant is entitled for enhancement of the compensation awarded by the Tribunal under various heads.

8. In *State of Haryana v. Jasbir Kaur* [(2003) 7 SCC 484]

the Apex Court held that the Tribunal under Section 168 of the Motor Vehicles Act, 1988 is required to make an award determining the amount of compensation which is to be in the real sense 'damages' which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

9. In *National Insurance Company Ltd. v. Pranay Sethi*

[(2017) 16 SCC 680] a Constitution Bench of the Apex Court 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 standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The

conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability.

10. In the instant case, the compensation awarded by the Tribunal under various heads reads thus:

Amount	Sl.	Compensation allowed at Basis/vital details in	allowed No.
different heads	a nutshell	Rs. Loss of income for 3 1	4,500 1500x3
months	Transport to hospital, extra 2	nourishment and damage 500 to	
clothing	Medical and treatment 3	10,000 expenses Pain and sufferings 4	
15,000	endured 5	Loss of amenities of life 3,000	Total 33,000

11. The accident occurred on 10.07.1997. At the time of accident,

the appellant was aged 36 years. He claimed a monthly income of Rs.4,000/- as an E.D.D.A Postman in Maroor Post Office and a part- time Lecturer in a tutorial college. In order to prove monthly income, Ext.A8 salary certificate dated 04.07.1998 issued by the Postmaster, Adoor was placed on record, as per which the appellant is working as EDDA Postman in Maroor Post Office on a monthly emolument of Rs.1,368/-. Another salary certificate, Ext.A9 dated 10.06.1998 issued

by the Principal, Vivekananda College, Pathanapuram was placed on record, as per which the appellant is employed as a part-time Lecturer in that tutorial college

on a monthly salary of Rs.4,000/-. No materials were produced to prove the educational qualification of the appellant. He has also not mounted the box. Ext.A9 salary certificate was not proved by examining the person concerned. In the absence of any reliable materials, the Tribunal fixed the monthly income of the appellant notionally as Rs.1,500/-, for the purpose of assessing compensation under various heads.

12. In Ramachandrappa v. Manager, Royal Sundaram

Alliance Insurance Company Limited [(2011) 13 SCC 236] the Apex Court reckoned the monthly income of a coolie (manual labourer), who met with a road accident in the year 2004, at the age of 35 years, notionally as Rs.4,500/-. The Apex Court held that, the claimant who was working as a coolie cannot be expected to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in the

facts of the said case, the Tribunal should have accepted the claim of

the claimant. The Apex Court made it clear that, in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant, in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

13. In Syed Sadiq v. Divisional Manager, United India

Insurance Co. Ltd. [(2014) 2 SCC 735], taking note of the earlier decision in Ramachandrappa's case (supra), the Apex Court reckoned the monthly income of a vegetable vendor, who met with a road accident in the year 2008, at the age of 24 years, notionally as Rs.6,500/-. In the said decision, the Apex Court held that, a labourer in an unorganised sector doing his own business cannot be expected to produce documents to prove his monthly income. Therefore, there was no reason

for the Tribunal and the High Court to ask for evidence to prove his monthly income. Going by the state of economy prevailing at that time and the rising prices in agricultural products, the Apex Court accepted his case that a vegetable vendor is reasonably capable of earning 6,500/- per month.

14. In the absence of any reliable materials, considering the economic conditions prevailing at the time of accident, i.e., during the year 1997, and taking note of the fixation of notional monthly income

by the Apex Court in the decisions referred to supra, and also Ext.A8 salary certificate, this Court deem it appropriate to refix the monthly income of the appellant notionally as Rs.2,000/-, for the purpose of assessing compensation under different heads.

15. Ext.A5 accident register-cum-wound certificate would show

that the appellant was brought to Government Hospital, Adoor with inability to move right lower limb and tenderness over lower lumbar region. Ext.A6 discharge card would show that he had undergone inpatient treatment in that hospital for 9 days from 10.07.1997 to 19.07.1997. He was treated there for low back ache and pain on right

hip joint region. In X-ray of pelvis, fracture rim of acetabulas was found. As per Ext.A7 medical certificate dated 30.08.1997 issued by Dr.M.J. Suresh Kumar, who treated the appellant at the Government Hospital, Adoor, he had undergone inpatient treatment in that hospital from 10.07.1997 to 19.07.1997 for low back ache and contusion on right hip joint. Ext.A10 certificate issued by Dr. D. Rajan, an Ayurvedic Physician conducting Kalpaka Pharmaceuticals at Adoor is to the effect that the appellant was under his treatment for back ache and weakness of legs from 16.08.1997 and the appellant paid a sum of Rs.95,650/- towards cost of medicine and consulting fees. The doctors who issued Exts.A7 and A10 were also not examined before the

Tribunal to prove those certificates. Ext.A11 series of medical bills regarding ayurvedic treatment was for a total sum of Rs.1,13,277/-. In the absence of any

reliable materials, the Tribunal rejected the aforesaid medical bills and granted a consolidated amount of

Rs.10,000/- towards medical expenses. 16. Towards loss of earning, the Tribunal awarded a sum of Rs.4,500/-, at the rate of Rs.1,500/- for a period of 3 months. Considering the nature of injuries sustained and the treatment the appellant had undergone, as borne out from medical records, the period of 3 months fixed by the Tribunal for granting loss of earning is re-fixed as 4 months. Since the monthly income of the appellant is re-fixed notionally as Rs.2,000/-, the compensation under the head loss of earning is re-fixed as Rs.8,000/- (2,000 x 4), resulting an additional compensation of Rs.3,500/- (8,000 - 4,500).

17. Towards transportation to hospital, extra nourishment and

damage to clothing the Tribunal awarded a sum of Rs.500/-. The accident is of the year 1997. Considering the nature of injuries sustained and the treatment the appellant had undergone, as borne out from medical records, the compensation awarded by the Tribunal under this head is re-fixed as Rs.1,000/- towards transportation to

hospital; Rs.1,000/- (100 x 10) towards extra nourishment; Rs.1,500/- (150 x 10) towards bystander expenses; and Rs.750/- towards damage to clothing, resulting an additional compensation of Rs.3,750/- [(1,000+1,000+1,500+750)-500].

18. Towards medical and treatment expenses the Tribunal awarded

a sum of Rs.10,000/-. In the absence of any reliable materials, the Tribunal rejected the claim made by the petitioner for medical expenses for ayurvedic treatment, covered by Ext.A11 series of medical bills and granted a consolidated amount of Rs.10,000/-. The compensation awarded by the Tribunal under this head represents just and reasonable compensation, which requires no enhancement in this appeal.

19. Towards pain and suffering, the Tribunal awarded Rs.15,000/-. Considering the nature of injuries and the treatment the appellant had undergone, the compensation awarded by the Tribunal towards pain and sufferings represents just

and reasonable compensation, which requires no enhancement in this appeal.

20. Towards loss of amenities the Tribunal awarded a sum of

Rs.3,000/-. No materials have been produced before the Tribunal to prove that on account of the injuries sustained the appellant is having any permanent disability. Considering the nature of injuries sustained as borne out from Exts.A5 and A6, the compensation awarded by the Tribunal under this head is re-fixed as Rs.5,000/-, resulting an additional compensation of Rs.2,000/- (5,000-3,000).

21. In the result, the appellant will be entitled for payment of

additional compensation of Rs.9,250/- (Rupees Nine thousand two hundred and fifty only) [3,500 + 3,750 + 2,000] in this appeal, which will carry interest at the rate of 9% per annum from the date of petition till realisation. The third respondent insurer shall satisfy the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment, after deducting the liability, if any, of the

appellant/claimant towards Balance Court Fee. The disbursement of the amount to the appellant shall be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06.09.2019. This appeal is disposed of as above. No order as to costs. Sd/- ANIL K.NARENDRAN shg JUDGE

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