

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

MACA.No. 2418 of 2012 ()

**-----
AGAINST THE AWARD IN OPMV 870/2007 of M.A.C.T OTTAPPALAM DATED 19-07-
2012**

APPELLANT (S) /APPELLANT:

RADHAKRISHNAN P.
S/O.VIJAYA VELAPPAN, PULICHANJERI OUSE, ATTASSERY P.O.
KARIMPUZHA 1 VILLAGE, OTTAPALAM TAULK, PALAKKAD DIST

BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU

RESPONDENTS:

1. RASHEED, S/O.MUHAMED
KARIMBANAKKAL HOUSE, PANAMKUNNU, ATTASSERY P.O.
KARIMPUZHA I VILLAGE, OTTAPALAM TALUK, PALAKKAD DIST
PIN-679513(DRIVER OF THE GOODS AUTORICKSHAW
BEARING REGISTRATION NO KL-09-9815)

2. V.MOHAMMED, VELAYANGATTIL HOUSE, ATTASSERY(P.O)
KARIMPUZHA I VILLAGE, OTTAPALAM TALUK
PALAKKAD DIST, PIN - 679513(OWER OF GOODS AUTORICKSHAW
BEARING REGISTRATION NO KL-09-9815)

3. UNITED INDIA INSURANCE CO LTD
DIVISIONAL OFFICE, SURYA COMPLEX, 2ND FLOOR
B-1 WING, PALAKKAD
PIN-678001(INSURER OF GOODS AUTHORICKSHAW BEARING
REGISTRATION O KL-09/9815)

R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 16-11-2015, ALONG WITH MACA. 1574/2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRA, JJ.**

~~~~~

M.A.C.A. Nos. 2418 of 2012  
and 1574 of 2013

~~~~~

Dated, this the 16th day of November, 2015

JUDGMENT

Anil K. Narendran, J.

These appeals arise from the Award passed by the Motor Accident Claims Tribunal, Ottapalam in O.P.(M.V.) No. 870 of 2007. The appellant in M.A.C.A No. 2418 of 2012 is the claimant in that claim petition filed under Section 166 of the Motor Vehicles Act claiming compensation for the injuries sustained in the motor accident occurred on 04.03.2007. The appellants in M.A.C.A. No. 1574 of 2013 are respondents 1 and 2 in that claim petition, namely the driver and owner of the vehicle involved in that accident. The Tribunal, by the impugned Award, found that the accident occurred due to the rash and negligent driving of the autorikshaw by the first respondent driver. However, since the claimant was found to be a gratuitous passenger in the goods autorikshaw, the 3rd respondent insurer was absolved from the liability to pay compensation. The

*M.A.C.A. Nos. 2418 of 2012
and 1574 of 2013.*

: 2 :

Tribunal allowed the claim petition awarding a total compensation of Rs.7,69,470/- to the claimant together with interest @7% p.a. and the first respondent driver and the second respondent owner were held jointly and severally liable to pay the amount of compensation.

2. M.A.C.A. No. 2418 of 2012 is filed by the claimant for enhancement of compensation already granted by the Tribunal. On the other hand M.A.C.A. No. 1574 of 2013 is filed by the first respondent driver and the second respondent owner of the autorikshaw contending that the third respondent insurer cannot be absolved from the liability to indemnify them and that, the quantum of compensation awarded by the Tribunal under different heads is on a higher side.

3. We heard the arguments of the learned counsel for the appellants in both the appeals and also the learned counsel appearing for the insurer.

4. Pleadings and materials on record would show that on 04.03.2007 while the claimant was travelling in the goods autorikshaw bearing registration No. KL-9/B-9815 driven by the

first respondent and owned by the second respondent, it suddenly turned in order to save the rider in a motorcycle and as a result the autorikshaw overturned and the claimant sustained serious injuries. Immediately after the accident, the claimant was taken to Al-Shifa Hospital, Perinthalmanna where he had undergone inpatient treatment.

5. Before the Tribunal PW1 to 4 were examined on the side of the claimant and Exts. A1 to A13 were marked. On the side of the respondents Exts. B1 to B4 were marked and Ext.X1 is the medical report. On appreciation of the facts and circumstances of the case, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the autorikshaw by the first respondent driver. Regarding the liability of the insurer, the Tribunal found that the claimant is only a gratuitous passenger in the goods autorikshaw owned by the second respondent and as such the 3rd respondent insurer will have to be absolved from the liability to pay compensation to the claimant.

6. When the matter was pending before the Tribunal, an attempt was made by the claimant to amend the claim petition in order to have a contention that the accident occurred while he was

*M.A.C.A. Nos. 2418 of 2012
and 1574 of 2013.*

: 4 :

travelling in the autorikshaw accompanying goods. In order to substantiate the aforesaid contention, certain documents such as Ext. A11 cash receipts from M/s Solar Agencies, Sreekrishnapuram was also produced. However the Tribunal noticed that the stand taken by the claimant in the amendment application is contrary to the statement in Ext.A2 F.I. Statement. In Ext. A2 F.I. Statement, the witness has categorically stated that the claimant was returning in the goods autorikshaw after delivering vegetables. It has also come out that the goods autorikshaw is having seating capacity of only one, meant for driver. Therefore, the Tribunal came to the conclusion that the claimant is only a gratuitous passenger in the goods autorikshaw driven by the first respondent and as such the third respondent insurer can not be fastened with the liability to pay compensation for the injuries sustained by the claimant. The aforesaid finding of the Tribunal is also supported by the judgment of the Apex Court in **United India Insurance Co. Ltd. Vs. V. Suresh [2008 (4) KLT 552]**. In such circumstances, we find absolutely no ground to interfere with above finding of the Tribunal absolving the third respondent insurer from the liability to pay the amount of compensation to the claimant.

7. Regarding the quantum of compensation, the claimant would contend that, taking into account nature of injuries sustained, treatment he had undergone and also the disability suffered, the amount of compensation awarded by the Tribunal under different heads does not represent a just and reasonable compensation and as such he is entitled for enhancement of compensation. Per contra, the learned counsel for the respondents 1 and 2, namely driver and owner of the autorikshaw, who are the appellants in M.A.C.A. No. 1574 of 2013, would contend that the compensation awarded by the Tribunal under different heads are highly excessive and not supported by any reliable materials. They would contended that, without any reliable materials, the Tribunal granted an exorbitant sum of Rs.5,12,957/- towards loss of earning; merely relying on Ext.A13 salary certificate.

8. Exts. A8 and A12 are the leave details of the claimant, who was working as a teacher in AMLP School, Chamaparamba. It is relying on Exts. A8 and A12 leave details, the claimant is contending that due to the injuries sustained in the accident, he was on leave without allowance for considerably long period and as such he is entitled for loss of earning on the strength of Ext. A13

salary details issued by the Head Master of the school. Though the claimant would contend that due to shortening of leg, he sustained fracture of left tibia in the year 2011, there is absolutely no reliable materials to arrive at such a conclusion. It is pertinent to note that the claimant has not even chosen to produce the medical certificates, based on which he was granted leave without allowance for a considerably long period. Though he has produced Ext. A9 discharge summary in respect of the injuries sustained in the year 2011, he has not produced discharge summary in respect of the treatment he had undergone in respect of the injury sustained on 04.03.2007. Therefore, the materials on record are not at all sufficient to arrive at a conclusion that due to the injuries sustained in the accident occurred on 04.03.2007, the claimant has to take leave without allowance for a considerably long period. In that view of the matter, merely on the strength of Ext. A13 salary details, it cannot be concluded that the claimant was on leave without allowance for such a long period due to the injuries sustained in the accident. It is for the claimant to establish the said fact before the Tribunal with reliable materials.

9. Considering the nature of injuries sustained by the claimant, he would have to undergone treatment for a considerably long period. However the Tribunal proceeded as if the claimant had undergone inpatient treatment only for 19 days. The learned counsel for the claimant would submit that if an opportunity is granted to adduce additional evidence before the Tribunal, the claimant will be able to substantiate the treatment he had undergone for a considerably long period. We also noticed that, though a permanent disability of 24% was assessed in Ext. X1 medical certificate, the Tribunal has not granted any compensation towards loss of earning capacity on a reasoning that, the disability did not affect the earning capacity of the claimant and he has drawn salary more than what he had received before the accident. However, it has to be noticed that, the permanent disability of 24% certified in Ext. X1 will have the impact once the claimant retires from service. In that view of the matter, the entitlement of the claimant for compensation towards the loss amenities after attaining the age of superannuation, by applying proper multiplier, has to be assessed by the Tribunal.

10. The materials on record, makes it explicitly clear that the

goods autorikshaw in question is having a seating capacity of only one, meant for driver. The appellant, who is a well educated person and working as a teacher in a school, was travelling in the autorikshaw by sharing the seat of the driver. Therefore, the question whether any negligence on the part of the claimant have contributed to the accident is something to be decided by the Tribunal based on the evidence on record, before fastening the liability on the first respondent driver and the second respondent owner of the autorikshaw.

11. A reading of the Award passed by the Tribunal would show that the compensation awarded by the Tribunal under different heads like compensation for pain and sufferings, bystander expenses, etc. are on the lower side, considering the nature of injuries sustained by the claimant and also the treatment he had undergone. In that view of the matter, we deem it appropriate to remand the matter to the Tribunal for refixation of a just and reasonable compensation payable to the claimant under different heads and also to decide the question as to whether any negligence on the part of the claimant had contributed to the cause of accident. For this purpose, the matter is remanded to the

*M.A.C.A. Nos. 2418 of 2012
and 1574 of 2013.*

: 9 :

Tribunal and the parties are directed to appear before the Tribunal on **28.12.2015**. The appeals are disposed of accordingly.

Since the claim petition is of the year 2007, the Tribunal is directed to pass final orders, as expeditiously as possible, at any rate, within an outer limit of four months. It would be open for both sides to adduce additional evidence in support of their contentions.

The Registry is directed to return LCR to the Tribunal forthwith.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
ANIL K. NARENDRAN,
JUDGE

kmd

/True copy/

P.A. to Judge