

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

MACA.No. 1183 of 2011 ()

AGAINST THE JUDGMENT AND AWARD IN OPMV 150/2007 ON THE FILE OF THE
MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPPALAM DATED 21-03-2011

APPELLANT/PETITIONER:

V.RAJAN, S/O.VASU, VETTAPARAMBIL(H) ,
O.O.GANDHISEVA SADHANAM, PEROOR, OTTAPALAM
PALAKKAD DISTRICT.

BY ADV. SRI.T.C.SURESH MENON

RESPONDENTS/RESPONDENTS:

1. RATHEESH, S/O.SIVAN,
THEKKECHAKKUMALAYATH HOUSE, P.O.MANISSERY
VANIYAMKULAM, OTTAPALAM, PALAKKAD DISTRICT- 679521

2. PRAKASH KUMAR, S/O.LELAMMA,
MOOTHATH HOUSE, LAKKIDI, OTTAPALAM
PALAKKAD DISTRICT- 679301

3. UNITED INDIA INSURANCE CO.LTD.,
HOSPITAL JUNCTION, MAIN ROAD, MANNARKKAD
PALAKKAD DISTRICT- 678582

R,R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,**

M.A.C.A. No.1183 of 2011

Dated this the 3rd day of March 2015

JUDGMENT

Ramachandran Nair, J.,

This is an appeal filed by the appellant /petitioner . It is submitted that the main grievances are regarding the finding of contributory negligence on the ground of non-possession of the driving license and about the inadequacy of compensation.

2. As regards the first aspect, learned counsel for the appellant submitted that the view taken cannot be supported in the light of the decision reported in ***Sudhir Kumar Rana v. Surinder Singh [2008 (3) KLT 322]***. The accident occurred on 20.11.2006 at 7.30 p.m near Malasian Company Road, Athirakkad. He was riding a motor cycle bearing registration No.KL-7V-1346 through Pathirippala Sadhanam public road. The offending vehicle, a jeep bearing registration No. KEZ-841 entered the main road from the side road and hit against the

motor cycle.

3. He was aged 39 at the time of the accident. The injuries suffered are :

a) Compound Fracture right leg tibia

b) Compound fracture right leg tibia and fibula middle third, projecting anteriorly.

4. It is supported by Ext.A3 wound certificate. He was treated in the Medical College Hospital, Thrissur also. There, the injuries noted are :

"Compound fracture Rt.leg.tibia and fibula middle third, projecting anteriorly, no neurovascular injury noted and the patient referred to higher centre with POP slab".

5. He had undergone treatment as inpatient from 20.11.2006 to 1.12.2006. Ext.A11 is the disability certificate issued by the Orthopaedic Surgeon attached to Aswini Hospital, Thrissur who had certified permanent disability to the whole body at 14%. He was examined as PW1 also. Only on the finding that the petitioner was not examined, the Tribunal did not accept the percentage of disability and reduced it to 5% which

M.A.C.A. No.1183 of 2011 :3:

according to the learned counsel for the appellant, is not justified. As far as the monthly income claimed it is submitted that the monthly income ought to have been taken as Rs. 4,000/- as it is not an exorbitant one.

6. With regard to the claims under other heads, it is submitted that the claimant is entitled for further enhancement. As regards the first point viz., regarding the contributory negligence, the tribunal found against the appellant on the ground that two children aged 9 years and 7 years were travelling along with him at the time of the accident and that he had not produced driving licence.

7. The Apex Court in ***Sudhir Kumar Rana v. Surinder Singh [2008 (3) KLT 322]*** was of the view that :

"it is one thing to say that the appellant was not possessing any license but no finding of fact has been arrived at that he was driving the two wheeler rashly and negligently. If he was not driving rashly and negligently, which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be guilty of contributory negligence".

8. In the light of the above judgment we cannot justify the finding of the Tribunal as regards contributory negligence on the part of the appellant. Here the Police charge was only against the driver of the jeep.

9. Before the Tribunal, the respondents had relied upon the judgment of this Court in ***Pournami V. Sandhya Sudheer [2008 (4) KLT 817]***, to contend that contributory negligence will be there in taking children, in a two wheeler apart from the parents. In this context we rely upon a recent judgment of the Apex Court in ***Harinarayan v. Sajjan Singh and others [2015 (1) SCC 539]***, wherein an earlier judgment of the apex court in ***Jiju Kuruvila v. Kunjujamma Mohan [2013 (9) SCC 166]*** was also relied upon. It has been held in paragraph 17 that :

"However, the only aspect of the case on hand that we can reasonably assume is that the appellant father would have taken sufficient caution while riding the motorcycle since he was travelling with his two minor children (appellant minors). Further, upon examining the evidence produced on record, there is no proof showing negligence on the part of the appellant father. Thus in our view, the contributory negligence apportioned by the High Court at 25% on the

appellant father and 75% on the driver of the offending tractor is erroneous keeping in view the legal principles laid down by this Court on this aspect in the above-referred case”.

10. Herein also, there is no other evidence to show that the appellant was negligent in driving the vehicle. As far the police charge is concerned it is against the driver of the offending vehicle. In the light of the above we vacate the finding that the appellant was negligent by 40% for causing the accident.

11. As far as the quantum of compensation is concerned, the appellant had claimed Rs. 4,000/- as wages in pursuing his profession as a painter. The accident is in the year 2006. At any rate, it cannot be said that the income claimed is excessive. Therefore, we fix it as Rs. 4,000/- instead of Rs. 3,000/- arrived at by the Tribunal.

11. The next aspect is with regard to the percentage of disability and we have gone through Ext.A11 disability certificate issued by the Doctor. Therein, permanent disability to the lower limbs is shown as 35% and 14% is the whole body

M.A.C.A. No.1183 of 2011 :6:

disability. Various aspects have been considered by the Doctor who certified the percentage of disability. He was examined as PW1 also. Therefore, merely because the petitioner did not give oral evidence it will not destroy the evidentiary value of disability certificate which is supported by PW1's evidence. Hence, the percentage of disability is taken as 14% and compensation will have to be granted accordingly.

12. We are of the view that for pain and suffering, the amount granted by the Tribunal is inadequate considering the injuries and the treatment done. The Tribunal granted only Rs. 12,000/- for pain and suffering. We enhance it to Rs. 30,000/-. The compensation for continuing and permanent disability will be $\text{Rs. } 4,000 \times 12 \times 15 \times 14 / 100 = 1,08,000/-$.

13. In the light of the disability sustained by the petitioner, there will be consequent loss of amenities and convenience etc. The Tribunal has granted Rs.5,000 only under this head. We enhance the same to Rs. 30,000/-. Therefore, we recompute the compensation accordingly.

Sl. No.	Heads	Amount awarded	Amount modified
---------	-------	----------------	-----------------

1	Loss of earning	9000	12000 (Rs.4,000x13)
2	Medical and miscellaneous expenses	1800	1800
3	Future treatment		
4	Bystander expenses	2200	2200
5	Transportation expenses	1000	1000
6	Extra nourishment	1100	1100
7	Damage to clothing	500	500
8	Pain and suffering	12000	30000
9	Loss of dependency		
10	Loss of consortium		
11	Loss of estate		
12	Loss of love and affection		
13	Loss/reduction in earning capacity		
14	Loss of amenities and convenience	5000	30000
15	Compensation for continuing permanent disability	27000	108000
	Total	59600	1,86,600

14. Thus the claimant will be entitled to a total compensation of Rs. 1,86,600/- (Rupees One lakh Eighty Six Thousand Six hundred only) which will carry interest at the rate of 9% for the enhanced compensation from the date of petition in

M.A.C.A. No.1183 of 2011 :8:

the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513].

15. The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment.

The claimant is permitted to withdraw the amount. The parties will suffer their costs in the appeal.

The appeal is allowed accordingly.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge

M.A.C.A. No.1183 of 2011 :9:

M.A.C.A. No.1183 of 2011 :10:

M.A.C.A. No.1183 of 2011 :11:

T.R.RAMACHANDRAN NAIR
(JUDGE)

P.V.ASHA
(JUDGE)

AL/-

M.A.C.A. No.1183 of 2011 :12: