

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 20TH DAY OF MAY 2021 / 30TH VAISAKHA, 1943

WP(C) NO. 9961 OF 2021

PETITIONER:

MOHAMMED REHAB VADAKKAN (MINOR)

1. REPRESENTED BY HIS FATHER SHAMEER VADAKKAN,
R/AT VATTAKANDATHIL HOUSE, PATHAPPIRIYAM P.O,
MALAPPURAM DISTRICT.

BY ADVS KODOTH SREEDHARAN

RESPONDENTS:

UNION OF INDIA

1. REPRESENTED BY ITS SECRETARY,
MINISTRY OF CIVIL AVIATION, NEW DELHI 110 001

AIR INDIA EXPRESS LIMITED,

2. REPRESENTED BY ITS CHAIRMAN ANDMANAGING DIRECTOR,
CORPORATE OFFICE, AIR INDIA EXPRESS LTD, DH ROAD,
ERNAKULAM, KOCHI 682 016.

BY ADVS JOSEPH KODIANTHARA (SR.) ,SC

OTHER PRESENT:

SRI.P.VIJAYAKUMAR,ASGI

SRI.ABRAHAM JOSEPH MARKOS,SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20.05.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.ASHA J.

W.P.(C).No.9961 of 2021

Dated this the 20th day of May, 2021

J U D G M E N T

This writ petition is filed by a passenger who was injured in the accident which occurred on 07.08.2020 at the Karippur International Airport, Kozhikode during landing of the Air India Express Dubai- Kozhikode Flight IX-1344, an international air carrier. The petitioner has prayed for a direction to the respondents to offer him compensation as required under Rule 25 to 29 and Rule 22(6) of Schedule 3 of the Carriage by Air Act, 1972 at the similar range and level of compensation fixed as in Exts.P11 and P11(a), and in the light of the principles laid down in paragraph 49 of the judgment in National Insurance Co.Ltd. v M/s. Bhogura Polyfab Pvt. Ltd. [(2009(1) SCC 267)] and also to grant him liberty to approach the consumer forum for the balance amount. He has

also prayed for a direction to the respondents to pay the liability of One Lakh Special Drawing Right (now enhanced to 1,38,000 Special Drawing Right) as injury compensation and loss of baggage under Rule 21(1) and 22(1) of the Third Schedule of the Act and cargo and baggage claim.

2. The 2nd respondent has filed a preliminary counter affidavit in this writ petition, explaining the procedure followed by them till this time, in the matters of determining disbursing compensation on the claims received.

3. Heard Sri.Kodoth Sridharan, the learned counsel for the petitioner and Senior counsel Sri.Joseph Kodianthara for the 2nd respondent.

4. The learned Senior counsel for the 2nd respondent submitted that the claims are considered in accordance with the priority with reference to the nature of injuries sustained by the passengers. It is also submitted that offer letter would be issued at the earliest, and as and when such offer letter is issued, petitioner can appear before the respondents for negotiation and further claims if any raised,

would be considered on the basis of materials. It is also pointed out that the offer is made as without prejudice letter, and petitioner would be free to attend negotiation. The aforesaid submission made by the learned Senior counsel is recorded. In the preliminary counter affidavit it is stated that without prejudice letter is yet to be issued in the case of petitioner in view of Ext.R2(a) letter requesting to put on hold the assessment and Ext.R2(b) documents furnished on 12.04.2021 and that the offer letter would be issued in due course.

5. Both sides submit that a similar writ petition was already disposed of by Ext.P11 judgment dated 27.01.2021 in W.P(C).No.27970/2020 with the following direction:-

“In the circumstances, this writ petition is disposed of directing the 2nd respondent to disburse the amount of Rs.1,51,08,234/- in respect of compensation offered in respect of the 2nd petitioner, to the petitioners forthwith, in accordance with law. If the petitioners are aggrieved/dissatisfied by the offer made by the 2nd respondent in respect of compensation for the death of Sharafudeen or for the injury of the 1st petitioner, it is made clear that the petitioners will be at liberty to approach this Court or any other appropriate legal forum for redressal of their grievances, in accordance with law”.

This writ petition is also disposed of, in the light of the aforesaid direction, making it clear that the petitioner

would be at liberty to approach this Court or any other appropriate legal forum for redressal of his grievances in accordance with law, in case he is dissatisfied with the offer.

Sd/-

P.V.ASHA, JUDGE

AS

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 - TRUE COPY OF THE JUDGMENT IN WP(C) NO. 32550/10 DATED 20-07-2011 REPORTED IN 2011 (3) KHC 199 (ABDUL SALAM VS. UNION OF INDIA)

EXHIBIT P2 - TRUE COPY OF THE JUDGMENT IN WA NO. 1197/2011 DATED 25-08-2011 REPORTED IN 2011 (3) KHC 761 (NATIONAL AVIATION COMPANY VS. ABDUL SALAM)

EXHIBIT P3 - TRUE COPY OF THE TEXT OF THE SPEECH DT 30-04-2008 OF THE MINISTER FOR CIVIL AVIATION.

EXHIBIT P4 - TRUE COPY OF THE WORKING PAPER BY INTERNATIONAL CIVIL AVIATION ORGANIZATION DATED 27-09-2010

EXHIBIT P5 - TRUE COPY OF THE RELEVANT PORTION OF THE PREPARATORIES IN THE INTERNATIONAL CONFERENCE WHICH LED TO THE MONTREAL CONVENTION DATED 14-05-1999

EXHIBIT P6 - TRUE COPY OF THE ORDER IN WPC NO. 23097/2011 DATED 5-09-2011

EXHIBIT P7 - TRUE COPY OF THE COMMON JUDGMENT IN WP(C) NO. 23097/2011 AND WA NO. 1380/2011 DATED 29-09-2011.

EXHIBIT P8 - TRUE COPY OF THE FILLED IN FORMAT GIVEN TO THE 2ND RESPONDENT DATED 12-04-2021

EXHIBIT P9 - TRUE COPY OF THE SETTLEMENT VOUCHER PREPARED BY THE 2ND RESPONDENT.

EXHIBIT P10 - TRUE COPY OF THE MEDICAL RECORD DT 8-08-2020 OF THE PETITIONER.

EXHIBIT P11 - TRUE COPY OF THE JUDGMENT IN WP(C) NO. 27970/2020 DATED 27-01-2021 BY THIS HON'BLE COURT.

EXHIBIT P11(A) - TRUE COPY OF THE OFFER VOUCHER IN THE NAME OF

AMEENA SHERIF.

EXHIBIT P12 - TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NO.
2914/2019 DT 3-3-2020

RESPONDENTS EXHIBITS:

EXHIBIT R2(A) - TRUE COPY OF THE LETTER DATED 26.03.2021 ISSUED BY
THE PETITIONER TO THE SECOND RESPONDENT.

EXT.R2(B): TRUE COPY OF THE LETTER DATED 12.04.2021 ISSUED BY THE
PETITIONER TO THE SECOND RESPONDENT.

EXT.R2(C): TRUE COPY OF THE JUDGMENT DATED 08.03.2021 PASSED BY
THIS HON'BLE COURT IN WPC.NOS.4872/2021, 3506/2021, 3536/2021,
3681/2021 AND 3731/2021.