

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 1ST DAY OF DECEMBER 2021 / 10TH

AGRAHAYANA, 1943

MACA NO. 769 OF 2011

AGAINST THE AWARD IN OP(MV) 1294/2007 OF MOTOR ACCIDENTS

CLAIMS TRIBUNAL, OTTAPPALAM

APPELLANT/PETITIONER :

NISANTH.N.P.,
AGED 20 YEARS, S/O.PARAMESWARAN,
NELLIPARAMBIL HOUSE, P.O.ANCHERY,
SOCIETY ROAD, THRISSUR TALUK,
THRISSUR DISTRICT.

BY ADV SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENTS :

- 1 RAMESH T.M., S/O.MANI,
THADATHIL HOUSE, P.O.PERMABRA,
KODAKARA VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT, PIN-680 610
(OWNER-CUM-DRIVER OF KL-8 S 649 MARUTHI CAR) .
- 2 NATIONAL INSURANCE CO. LTD.,
MAIN ROAD, IRINJALAKUDA,
THRISSUR, PIN-680 603
POLICY NO.570701/31/07/6700000171
VALID FROM 8/4/2007 TO 7/4/2008.

BY SMT.RAJI T.BHASKAR, STANDING COUNSEL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 01.12.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

“C.R.”

M.A.C.A.No.769 of 2011

J U D G M E N T

Nisanth N.P., the petitioner in O.P.(MV)No.1294 of 2007 on the file of the Motor Accidents Claims Tribunal, Ottappalam impugns award dated 30.08.2010 in the above case on the ground that the same is inadequate. Respondents before the Tribunal are arrayed as the respondents herein.

2. Brief facts of the case are as follows;

According to the appellant, on 05.08.2007 at about 3.25 p.m., he met with an accident while driving a car through Mannuthy-Paliakkara public road, when another vehicle bearing registration No.KL 8 S 649, driven by the first respondent in a rash and negligent manner, came from the opposite direction, hit against the car driven by the appellant. According to the appellant, he sustained serious injuries and he underwent treatment thereof. Thus, he canvassed compensation to the tune of Rs.2,00,000/-.

3. R1, the owner of the vehicle filed written statement denying the negligence as well as the accident, while highlighting a valid policy with the second respondent.

4. R2 filed written statement and admitted the policy, while disputing the quantum.

5. The Tribunal ventured the matter by confining the evidence of the petitioner as PW1 and the documents marked as Exts.A1 to A10 on the side of the petitioner, since no evidence let in by the insurance company. Finally, Rs.64,400/- was granted by the Tribunal with interest at the rate of 8% per annum.

6. While disputing the quantum, it is submitted by the learned counsel for the appellant that the Tribunal wrongly fixed the monthly income of the appellant at Rs.3,000/-, though it was specifically asserted in the petition that he was a qualified driver and his monthly income was Rs.4,000/- per month. In support of his contention, Ext.A9, copy of his driving licence has been placed. It is submitted by the learned counsel further that following the ratio in in [(2011) 13 SCC 236], **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd.** also the income to be fixed is more than Rs.4,000/- and therefore, the Tribunal went wrong in fixing Rs.3,000/- as

the monthly income.

7. On perusal of the available materials at par with the submission made by the learned counsel for the appellant, the submission appears to be convincing. In **Ramachandrappa's** case (*supra*), the Apex Court fixed the monthly income of a coolie during 2004 at Rs.4,500/- and therefore, Rs.4,000/- claimed by the appellant herein in an accident occurred during 2007 as such to be fixed as the monthly income. Accordingly, Rs.4,000/- per month is fixed as the monthly income in this matter.

8. It is submitted by the learned counsel further that the petitioner herein sustained communicated fracture femur right and he underwent treatment initially, for a period of ten days from 05.08.2007 to 14.08.2007 and thereafter, he underwent treatment for five days from 20.01.2009 to 24.01.2009 for evaluation of the implant fixed during his initial admission. That apart, the learned counsel submitted further that though Ext.A10 disability showing 8.57% whole body disability was placed before the Tribunal, the Tribunal did not consider the same and no amount for the disability was granted. The learned counsel canvassed loss of disability income also acting on Ext.A10.

9. Thus, this is a case in which the Tribunal did not accept

Ext.A10 disability certificate and the Tribunal held that Ext.A10 showing 15% whole body disability cannot be accepted as the same was not proved by examining the doctor viz, Orthopaedic Surgeon who issued the same. Now, the questions arise for consideration are as follows:-

1) *What is the procedure to be adopted by the Tribunal when a disability certificate issued by one doctor, other than a Medical Board, has been pressed into service by the claimant without examining the doctor who issued the same?*

2) *Whether Tribunal can reject a disability certificate issued by one doctor, other than a Medical Board for non-examination of the author of the same alone?*

10. While searching answers for these queries, evaluation of the evidence in this matter is necessary. Reading Ext.A2 wound certificate and Ext.A6 discharge card showing the injuries and treatment in relation to the appellant, the same would depict that the appellant herein sustained communicated fracture femur right and he underwent inpatient treatment to heal the infirmities. According to the appellant,

he suffered 15% disability and in order to establish the same, Ext.A10 has been pressed into. Ext.A10 is a disability certificate issued by one private doctor on 15.03.2010. In fact, Ext.A10 is not a certificate issued by the Medical Board. The Tribunal did not consider Ext.A10 on the sole ground that the author of Ext.A10 was not examined. In this context, the procedure to be followed by a Tribunal while considering disability certificate issued by one doctor, other than a Medical Board, is extracted as under:

1) *In the case of a disability certificate issued by one doctor, other than a Medical Board, either from the Government sector or from the private sector, the Tribunal shall insist for examination of the doctor in order to act upon the same. After examining the doctor, the Tribunal is at liberty to accept such certificate as such or to fix a lesser percentage of disability for reasons recorded based on the injuries sustained, the observations in the treatment records, the disability certificate and on the basis of the evidence given by the author/doctor of the disability certificate.*

2) *In the case of a disability certificate issued by one doctor, other than a Medical Board, either from the Government sector or from the private sector, the Tribunal can act upon the same without examining the doctor by fixing a less percentage of disability based on the injuries sustained, the observations in the treatment records and the Tribunal can personally verify the physical condition of the injured securing his presence before the Tribunal and by preparing a note in this regard. The said note shall be appended with the disability certificate for reference to superior courts.*

3) *In the case of a disability certificate issued by one doctor, other than a Medical Board, either from the Government sector or from the private sector, the Tribunal can discard or reject the same for reasons recorded in writing.*

4) *In the case of a disability certificate issued by one doctor, other than a Medical Board, either from the Government sector or from the private sector, the Tribunal cannot discard or reject a disability certificate*

merely for non-examination of the doctor who issued the same, though the Tribunal can very well discard or reject a disability certificate in toto for justifiable reasons to be recorded even with or without examining the doctor.

11. The forgoing discussion would lead to the conclusion that rejection of Ext.A10 certificate by the Tribunal for mere non-examination of the doctor cannot be justified. On evaluating the injuries, consequential treatment with reference to Ext.A10 disability, I am inclined to fix 7% whole body disability to the appellant and the disability income is granted accordingly.

12. On perusal of the award, the Tribunal granted loss of earnings for a period of three months at the rate of Rs.3,000/- per month. Considering the injuries, loss of earnings can be given for a period of four months at the rate of Rs.4,000/- per month. The appellant is entitled to get loss of earnings. Thus, the loss of earnings is re-calculated as under;

$$4,000 \times 4 = 16,000/-$$

Out of which, Rs.9,000/- was granted by the Tribunal.

Rs.7,000/- more is granted under the head loss of earnings.

13. The multiplier in the case of the appellant to be re-fixed at par with his age as borne out from Ext.A9 driving license, since the Tribunal fixed the multiplier with reference to the age of the dependants. In Ext.A9, appellant's date of birth is shown as 26.03.1984 and the date of accident was on 05.08.2007. So, he completed 23 years at the time of accident and as such, '18' is the multiplier following the ratio in [2010 (2) KLT 802], **Sarla Verma v. Delhi Transport Corporation**(age group between 21-25). Since the Tribunal negatived claim under disability income, disability income is calculated as under;

$4000 \times 12 \times 18 \times 7\% = \mathbf{60,480/-}$ is granted under the head loss of disability income.

14. It appears that the Tribunal granted Rs.12,000/- under the head pain and sufferings and Rs.3,000/- under the head loss of amenities. According to the learned counsel for the appellant, the same is insufficient taking note of the injuries and the consequential treatment. Accordingly, I am inclined to increase **Rs.5,000/-** more under the head pain and sufferings and **Rs.12,000/-** more under the head loss of amenities.

In the result, this appeal is allowed in part. It is ordered that the appellant is entitled to get enhanced compensation to the tune of

Rs.84,480/- (Rupees Eighty Four Thousand Four Hundred and Eighty only) at the rate of 8% interest granted by the Tribunal, excluding the amount already granted by the Tribunal, from the date of petition till the date of deposit or realisation, excluding the period of 165 days wherein, grant of interest was specifically disallowed by the order in C.M.Application No.1224 of 2011 dated 01.12.2021 and from 25.03.2021 to 01.12.2021, the period the appeal stood dismissed for default.

The insurance company is directed to deposit the same in the name of the appellant within two months from today and on deposit, the appellant is at liberty to to release the same.

Sd/-

A.BADHARUDEEN, JUDGE

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