

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS  
WEDNESDAY, THE 7<sup>TH</sup> DAY OF JUNE 2023 / 17TH JYAISHTA, 1945

MACA NO. 2129 OF 2011

OPMV 870/2007 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL,  
IRINJALAKUDA

APPELLANT/PETITIONER:

JITHEESH,  
S/O.MOHANAN, KORATTIYIL HOUSE,  
P.O.P.VEMBALLUR, KODUNGALLUR.

BY ADV SMT.JEENA JOSEPH

RESPONDENTS/RESPONDENTS:

- 1 V.P. BABU, S/O.PURUSHOTHAMAN, VALLOMPARAMBATH  
PANIKKASSERY HOUSE, PO PULLUT, KODUNGALLUR, PIN  
680 663.
- 2 SADIQUE, S/O.KUTTY, KARAPPAMVEETIL HOUSE, PO  
KODUNGALLUR, PIN 680 664.
- 3 ORIENTAL INSURANCE CO.LTD.,  
MANAPPAT BUILDING, KODUNGALLUR, PIN 680 664.

R3 BY ADV SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY  
HEARD ON 31.05.2023, THE COURT ON THE 07.06.2023 DELIVERED THE  
FOLLOWING:

## **J U D G M E N T**

The petitioner in OP (MV) No.870 of 2007 on the file of Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant herein impugning the award dated 06.05.2011, on the ground of inadequacy of compensation, as well as for exonerating the Insurance Company from indemnifying the insured.

2. On 18.04.2007 at 3.20 p.m, while the appellant was travelling in KL-08/AF-70 goods auto rickshaw, as the supplier and owner of the Ayurvedic medicines carried in it, the vehicle capsized due to the rash and negligent driving by the 2<sup>nd</sup> respondent. The appellant sustained serious injuries, including fracture of upper end of tibia left, and abrasions on both thighs and upper arms. He was admitted in hospital for 30 days and he had to expend considerable amount for his treatment. He approached the Tribunal claiming compensation of Rs.1,00,000/- but the Tribunal awarded only Rs.60,110/-.

3. Learned Tribunal found that there was no document to show that the appellant/claimant was the supplier/owner/agent of

Ayurvedic goods carried in that vehicle. Since it was a goods vehicle, in the absence of any documents to show that he was the owner or agent of the owner of the goods carried, the Insurance Company has no liability to compensate him and so the liability was fixed on respondents 1 and 2. According to the appellant, the Tribunal went wrong in finding that he was not the owner or authorised agent of the owner of the goods carried in that vehicle, and as per Section 147(1)(b)(i) of the Motor Vehicles Act, 1988, the owner of the goods or his authorised representative carried in the vehicle will be covered by the Policy.

4. In the written statement filed by the 3<sup>rd</sup> respondent, it is admitted that the appellant/claimant was travelling in the vehicle, but being an unauthorised passenger in a goods vehicle, he will not be covered by the Policy.

5. PW1 was examined and Exts.A1 to A6 were marked from the side of the appellant, and Ext.B1 was marked from the side of the 3<sup>rd</sup> respondent, before the Tribunal.

6. Now let us see whether any interference is warranted in the impugned award.

7. Learned Tribunal found that the appellant/claimant was

travelling in KL-8/AF-70 goods auto rickshaw, which was driven by the 2<sup>nd</sup> respondent in a rash and negligent manner. Learned Tribunal found that the appellant/claimant sustained grievous injuries in the accident resulting in 7% disability. So, compensation of Rs.60,110/- was awarded fixing the liability upon respondents 1 and 2.

8. PW1-the claimant deposed before Court that he was travelling in the goods auto rickshaw as the owner and supplier of the Ayurvedic medicines carried in it. During cross examination, he admitted that, in the cabin, there was only one seat for the driver and he was travelling along with the driver, sharing his seat, as the agent of the owner of the goods. When the auto rickshaw capsized, he sustained injuries. The FIR was lodged on 18.04.2007 ie., on the date of accident itself. Ext. A2 final report also says that the auto rickshaw capsized due to the rash and negligent driving of the goods auto rickshaw by the 2<sup>nd</sup> respondent, and the appellant/claimant was thrown out to the road and he sustained injuries. But Ext.A3 wound certificate is to the effect, that while the appellant was travelling in a two wheeler, he was hit by an auto rickshaw. Since the 3<sup>rd</sup> respondent is admitting in their written

statement, that the appellant was travelling in the goods vehicle as an unauthorised passenger, and they have no case that the appellant was riding a two wheeler at the time of accident, the history stated in the wound certificate is only to be ignored. As stated by PW1, he was travelling in the goods auto rickshaw along with the driver, as the agent of the owner of the goods, and that fact is not seen seriously disputed by the 3<sup>rd</sup> respondent. So this Court is inclined to accept the statement of the appellant that he was travelling in the goods auto rickshaw, in the cabin of the driver as the agent of the goods carried in that vehicle.

9. In the case of a three wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as an owner of the goods is supposed to share the seat of the driver. In such case, violation of the condition of the contract of insurance is approved. In the case on hand admittedly the appellant was sharing the seat of the driver of a three wheeler goods auto rickshaw. So it clearly amounts to violation of the policy condition even if he was travelling in that auto rickshaw as the owner or authorised agent of the goods carried in it. Admittedly no passengers are permitted in a goods vehicle which

has no seat in the cabin, other than the driver's seat. In such case, it would be open to the insurer to recover the amount of compensation ordered to be paid to the claimants, from the insured as laid down by the Apex Court in **United India Insurance Company v. Suresh** [2008 (4) KLT 552 SC], followed by this Court in **United India Insurance Company Ltd. v. Manoj** [2011 (1) KLT 502] and **Oriental Insurance Co. Ltd., Kozhikode, Represented by its Assistant Manager, Regional Office, Ernakulam North, Kochi-18 v. Kunhikrishnan and Others** [2017 SCC OnLine Ker 4293].

10. Based on the decision cited (*Supra*), the finding of the Tribunal that the 3<sup>rd</sup> respondent Insurance Company was liable to be exempted from compensating the injured is liable to be set aside. Even if there was violation of the Policy conditions, since that vehicle was validly insured with the 3<sup>rd</sup> respondent at the time of accident, the Company was liable to compensate the claimant initially, and then to recover the amount from the owner of the vehicle.

11. Now coming to the inadequacy of compensation alleged by the appellant, according to him, he was earning monthly income

of Rs.3,000/- as supplier of Ayurvedic medicines under Sree Pharma Ayurvedic Medicine, Kodungallur. He did not produce his salary certificate to prove his income. So learned Tribunal took his notional income as Rs.2,000/-. But going by the decision **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [AIR 2011 SC 2951]**, in the year 2007, he was eligible to get his notional income fixed @ Rs.6,000/-. Since his claim was only Rs.3,000/- per month, this Court is inclined to take his monthly income as Rs.3,000/-. He suffered open fracture of Tibial Plateau (L) and he was hospitalized for about 30 days. Learned Tribunal took his loss of income for 3 months @ Rs.2,000/-. Since we have taken his notional income @ Rs.3,000/-, for three months he is eligible to get Rs.9,000/-. After deducting Rs.6,000/- awarded by the Tribunal, he is entitled to get the balance amount of Rs.3,000/-.

12. Towards bystander expenses, learned Tribunal awarded only Rs.3,000/- ie., @ Rs.100/- per day for 30 days. Since the accident was in the year 2007, this Court is inclined to award Rs.150/- per day for 30 days and so he is eligible to get the balance Rs.1,500/- as enhancement towards bystander expenses.

13. Towards extra nourishment, nothing was awarded by the Tribunal. This Court is inclined to award Rs.1,000/- towards extra nourishment.

14. Towards pain and suffering, learned Tribunal awarded only Rs.15,000/-. He had suffered fracture of Tibial Plateau (L) and he was hospitalised for about 30 days, and he suffered disability also which according to the Tribunal was 3%. So towards pain and suffering, this Court is inclined to award Rs.5,000/- more.

15. Ext. A5 disability certificate was issued by an Orthopaedic Surgeon attached to Govt. Hospital, Kodungallur. He has assessed the disability of the appellant as 7%. But he has not stated that the disability assessed was with respect to whole body. Even then, considering the fact that the appellant had difficulty in squatting, climbing stairs, sitting cross legged etc. coupled with partial ankylosis of left knee and left ankle, this Court is inclined to take his disability as 5% with respect to his whole body. We have taken his monthly income as Rs.3,000/-. Since he was aged only 23 years, the multiplier applicable is 18. So the compensation for permanent disability can be assessed as Rs.32,400/- ( $3000 \times 12 \times 18 \times 5 / 100$ ). He was already paid Rs.12,240/- as compensation for permanent



disability and so he is entitled to get the balance amount of Rs.20,160/- as enhanced compensation under that head.

16. Towards loss of amenities, learned Tribunal awarded only Rs.4,000/-. This Court is inclined to enhance it by Rs.3,000/-, considering the period of hospitalisation and 5% disability suffered by him.

17. The compensation awarded under all other heads seem to be reasonable and hence no change is warranted.

Head of claim	Amount awarded by the Tribunal	Amount awarded in appeal	Difference to be drawn as enhanced compensation
Loss of earning	Rs.6,000/-	Rs.9,000/-	Rs.3,000/-
Bystander expenses	Rs.3,000/-	Rs.4,500/-	Rs.1,500/-
Extra Nourishment	....	Rs.1,000/-	Rs.1,000/-
Pain & suffering	Rs.15,000/-	Rs.20,000/-	Rs.5,000/-
Compensation for permanent disability/loss of disabilities	Rs.12,240/-	Rs.32,400/-	Rs.20,160/-
Loss of amenities	Rs.4,000/-	Rs.7,000/-	Rs.3,000/-
Total			Rs.33,660/-

18. So, the appellant is eligible to get the enhanced compensation of Rs.33,660/- (3,000 + 1,500 + 1,000 + 5,000 + 20,160 + 3,000).

19. The 3<sup>rd</sup> respondent-Insurer is directed to deposit the enhanced compensation of Rs.33,660/- (Rupees Thirty Three Thousand Six Hundred and Sixty only) in the Bank account of appellant with interest @ 7% per annum, from the date of petition till the date of deposit (excluding 112 days of delay in filing the appeal), within two months from the date of receipt of a copy of this judgment. The deposit must be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06/09/2019 and clarified in O.M.No.D1/62475/2016 dated 07/11/2019 after deducting the liabilities, if any, of appellant towards Tax, balance court fee and legal benefit fund. The 3<sup>rd</sup> respondent is at liberty to recover the amount so deposited from the 1<sup>st</sup> respondent-owner and his assets.

The appeal stands allowed accordingly, no order as to costs.

Sd/-

**SOPHY THOMAS  
JUDGE**