

Kerala High Court

Mansoor. C. vs C. Aslam on 15 June, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

MACA.No. 213 of 2004()

1. MANSOOR. C., S/O. E.K. HAMSA HAJI,  
... Petitioner

Vs

1. C. ASLAM, S/O. ABDULRAHIMAN KUTTY,  
... Respondent

2. GAFOOR. K.U., S/O. UMMER,

3. THE BRANCH MANAGER, ORIENTAL INSURANCE

4. K. ABDULKHADER, S/O. ANDARU,

5. MR. P. RAGHAVAN, S/O. KANDANKUNHI,

6. THE BRANCH MANAGER, NATIONAL INSURANCE

For Petitioner :SRI.P.K.MUHAMMED

For Respondent :SRI.MATHEWS JACOB (SR.)

The Hon'ble MR. Justice A.K.BASHEER

The Hon'ble MR. Justice P.Q.BARKATH ALI

Dated :15/06/2010

O R D E R

A.K.BASHEER & P.Q.BARKATH ALI, JJ.

M.A.C.A.No.213 OF 2004

Dated this the 15th day of June, 2010

JUDGMENT

Barkath Ali, J.

In this appeal under Section 173 of Motor Vehicles Act, the claimant in O.P.(MV)No.777/1998 of Motor Accidents Claims Tribunal, Kasargod challenges the judgment and award of the Tribunal dated July 31, 2003 awarding a compensation of Rs. 1,56,900/- for the loss caused to him on account of the injuries sustained by him in a motor accident.

2. The facts leading to this appeal in brief are these : The claimant was aged 28 the time of the accident and used to earn Rs. 25,000/- per month as a Sales Manager in a private firm. On July 25, 1998 at about 5.p.m., the claimant was travelling as a passenger in a Maruthi Car bearing Reg.No.KL 12/8708 from Vadakara to Mangalore which was driven by the first respondent. When they reached at Mailatty near Poinachi in National Highway 17, it collided head on with a lorry bearing Reg.No.14/6469 . The claimant sustained serious injuries. According to the claimant, accident occurred due to the rash and negligent driving of the offending Maruthi car by first respondent. First respondent as the driver, second respondent as the owner and third respondent as the insurer of the offending Maruthi car are jointly and severally liable to pay compensation to the claimant. Claimant claimed a compensation of Rs. 10 lakhs.

3. Respondents 1 and 2, the driver and owner of the offending car filed a joint written statement admitting the accident, but contended that the accident occurred due to the negligence on the part of the driver of the lorry. The third respondent, the insurer of the offending Maruthi Car filed a written statement admitting the policy.

4. In the light of the contentions raised by respondents 1 to 3, the driver, owner and the insurer of the lorry involved in the accident were impleaded as additional respondents 4 to 6 in the O.P. Respondents 4 and 5, the driver and the owner of the lorry remained absent before the Tribunal. The 6th respondent, the insurer of the lorry filed a written statement admitting the policy, but contended that the accident occurred due to the negligence on the part of the driver of the Maruthi Car.

5. This O.P. was jointly tried along with O.P.(MV) No.721/1998, filed by another injured passenger and a common award was passed. PW1 was examined and Exts.A1 to A14 series and Ext.X1 disability certificate of the claimant were marked on the side of the claimant before the Tribunal. No evidence was adduced by contesting respondents. The Tribunal on an appreciation of evidence found that the accident occurred due to the rash and negligent driving of the offending Maruthi Car by first respondent and awarded a compensation of Rs. 1,56,900/- with interest @ 9% per annum from the date of petition till realisation and proportionate cost. The claimant has come up in appeal challenging the quantum of compensation awarded by the Tribunal.

6. Heard the counsel for the appellant/claimant and the counsel for the third respondent/Insurance Company.

7. The accident is not disputed. The finding of the Tribunal that the accident occurred due to the negligence on the part of the first respondent is not challenged in this appeal. Therefore, the only

question which arises for consideration is whether the claimant is entitled to any enhanced compensation.

8. The claimant sustained the following injuries as revealed from Ext.A3, the copy of the wound certificate and Ext.A4, discharge summary issued from the hospital.

1. Lacerated wound over the left eyebrow 2 x 1 cm.
2. Laceration over the lower lip on the right side 1.5 cm. x = cm.
3. Lacerated wound of 3x 3 cms. on the right forearm middle 1/3rd .
4. Degloving injury to left forearm on the dorsal aspect.
5. Deformity over the right thigh with contusion.
6. Swelling over the left knee with tenderness
7. Swelling and tenderness over the left ankle.
8. Lacerated wound of 5 x 2 cm. over the left leg.
9. X - ray revealed fracture of radius of left forearm with dislocation.

9. He was admitted in the hospital on July 25, 1998 and was discharged on August 16, 1998. Ext.A8, the certificate of disability issued by the Doctor shows that claimant has now a permanent disability of 30%. Ext.X1, the certificate issued by the District Medical Board shows that he has a permanent disability of 25%.

10. The Tribunal awarded a total compensation of Rs.1,56,900/-. The break up of the compensation awarded is as under :

Loss of earning	- Rs. 7,200/-
Extra nourishment	- Rs. 2,500/-
Treatment expenses	- Rs.35,000/-
Pain and suffering	- Rs.15,000/-
Disability	- Rs.97,200/-

11. Counsel for the claimant sought enhancement of the compensation for the disability caused, loss of amenities and enjoyment of life and for the disfigurement caused.

12. The Tribunal took the monthly income of the claimant as Rs. 1800/- and adopted a multiplier of 18 and accepted the percentage of disability as 25% as mentioned in Ext.X1 and awarded Rs.

97,200/- for the disability caused. The claimant was aged 28 at the time of the accident and was working as a Sales Manager in a private firm earning Rs. 25,000/- per month as seen from Ext.A9 and Ext.A10. Taking into consideration the above aspect, we feel that his monthly income can be reasonably fixed at Rs. 2,250/-. The multiplier adopted by the Tribunal as 18 and the percentage of disability as 25% as assessed by the Medical Board in Ext.X1 are not seriously challenged. Thus calculated for the disability caused, the claimant is entitled to a compensation of Rs.1,21,500/- ( 25% x 2250 x 12 x 18). Thus on this count, the claimant is entitled to an additional compensation of Rs. 24,300/-.

13. No compensation was awarded for the loss of amenities and enjoyment of life. The Tribunal has noticed that his left lower arm is disfigured and there were scar marks of the operation on the same. His left foot was also swelling. Taking into consideration all these aspects, we feel that for the loss of amenities and enjoyment of life, a compensation of Rs. 10,000/- would be reasonable. As regards the compensation awarded under other heads, we find the same to be reasonable and therefore are not disturbing the same.

14. In the result, the claimant is entitled to an additional compensation of Rs. 34,300/-. He is entitled to interest @ 9% per annum from the date of petition till realisation and proportionate cost. The third respondent being the insurer of the offending vehicle shall deposit the amount before the Tribunal within two months from the date of receipt of a copy of this judgment. The award of the Tribunal is modified to the above extent.

The Appeal is disposed of as found above.

A.K.BASHEER, JUDGE P.Q.BARKATH ALI, JUDGE sv.