

Kerala High Court

P.V.KUNHIKRISHNAN, J.

**Krishnanunni v. R.Balasubramanian**

09.03.2021

MACA.No.3093 OF 2008

**Motor Vehicles Act, 1988 - S. 166 - Driving licence - Application filed for production for Driving licence - Not produced - Moreover a lawyer was appearing for the driver before the Tribunal - Even then, the driving licence of the driver was not produced - Therefore, it can be safely concluded that there was no licence - Therefore, there can be an order allowing recovery of the compensation amount from the second respondent by the insurance company.**

JUDGMENT

These two appeals are connected and the appeals are filed challenging the same award passed by the Motor Accidents Claims Tribunal, Palakkad. Therefore, I am disposing these two appeals by a common judgment. (Hereinafter, the parties are mentioned in accordance to their rank in the Tribunal).

2. M.A.C.A. 461/09 is filed by the third respondent in O.P. (MV) No. 664/03 and M.A.C.A No. 3093/2008 was filed by the petitioner/claimant in the above O.P.(MV). M.A.C.A.No.461/2009 is filed by the Insurance Company mainly for the reason that, even though it is contended that the second respondent driver was not having a proper licence during the period of accident, that point is not considered properly by the Tribunal. The other appeal is filed by the claimant for enhancement of compensation.

3. The short facts for disposing these appeals are like this: On 16.02.2003 at about 3 p.m., the petitioner claimant was travelling in a motor bike bearing Reg. No. KL.9/L.931 as pillion rider from the place Kannambara to the place Vadakkenchery. Then the Tata Sierra car bearing Reg. No.TN.09/D.2689 hit against the said motor bike when it reached near Karemkode junction and thereby the petitioner claimant sustained injury. He was removed to Medical College Hospital, Thrissur. According to the petitioner/claimant the accident happened due to the negligent driving of the car by the second respondent. The first respondent is the owner of the car and the third respondent is the insurer.

4. To substantiate the case, the petitioner/claimant produced Exts.A1 to A14. He himself was examined as PW1 before the Tribunal. Ext. B1 is the copy of the policy. After going through the evidence and the documents, the Tribunal found that the petitioner/claimant is entitled an amount of Rs. Rs.1,37,474/- as compensation with interest @ 7.5% per annum. Even though the third respondent took a contention before the Tribunal that the second respondent driver has no valid licence, the Tribunal rejected the same mainly for the reason that in the final report filed by the police, there is no charge for the same. Aggrieved by

M.A.C.A.Nos. 3093/2008 & 461/2009 5 the above award, the Insurance Company filed M.A.C.A. 461/2009 and the claimant filed M.A.C.A. No. 3093/2008 for enhancement of compensation.

5. I will consider the appeal filed by the Insurance Company first. According to the counsel for the Insurance Company, I.A.5412/2007 was filed before the Tribunal with a prayer to issue appropriate direction to the second respondent to produce the driving licence. According to the counsel, one Advocate was appearing for the second respondent before the Tribunal. Even then the driving licence was not produced. In such situation, the court ought to have taken an adverse inference under Section 114(g) of the Evidence Act. There is force in the argument of the counsel for the Insurance Company. Even after filing I.A. No. 5412/2007 to produce the driving licence, the same was not produced. Moreover a lawyer was appearing for the second respondent before the Tribunal. Even then, the driving licence of the second respondent was not produced. Therefore, it can be safely concluded that there was no licence to the second respondent. Therefore, there can be an order allowing recovery of the compensation amount from the second respondent by the insurance company.

M.A.C.A.Nos. 3093/2008 & 461/2009

6. As far as M.A.C.A.No.3093/2008 is concerned the claimant is the appellant. According to the claimant/appellant, there was a disability certificate issued by the medical board and the same was not produced before the Tribunal during the trial. The medical board certificate is dated 27.2.2008 and the Tribunal passed the award on 29.2.2008. Therefore, the appellant was not able to produce the same before the Tribunal. Now the counsel for the appellant produced the disability certificate issued by the medical board. Therefore, that will be part of the record and it is marked as Ext.C1. I perused Ext.C1. As per Ext.C1 there is a permanent disability of 60% belongs to moderate category to the appellant.

7. It is true that no evidence is adduced to substantiate the above disability certificate. But, this Court cannot ignore the realities. In Pappu Deo Yadav v. Naresh Kumar and others [AIR 2020 SC 4424] after considering the earlier decisions, the Apex Court on the point of 'permanent disability' has held that the inquiry that has to be conducted by the Court is the resultant loss of income generating capacity of the claimant. The principle to be followed by the court in assessing motor vehicles compensation claims is to place the victim in the same position as he was before the accident. The Bench referred to the earlier decisions in Syed Sadiq and others v. Divisional Manager, United India Insurance Company [2014 (2) SCC 735] and Raj Kumar v. Ajay kumar and anr. [2011 (1) KLT 620 (SC)] and held that the court should not adopt a stereotypical or myopic approach, but instead, view the matter taking into account the realities supplied, both in the assessment of extent of disabilities and compensation under various heads. It was also held that the court should award compensation on future prospects.

8. In the light of the above principle I am not in a position to accept 60% disability to the appellant based on Ext.C1 disability certificate. The medical board clearly stated that the permanent disability is in moderate category. But this Court can safely conclude that the

permanent disability of the claimant is 40%.

9. Moreover, the Tribunal fixed the monthly income of the appellant as Rs.2500/-. According to the appellant, he was a carpenter and he was getting Rs.4,000/- per month as income. In the light of the judgment of the Apex Court in Ramachandrappa V. Manager, Royal Sundaram Alliance Insurance Co., Ltd. (2011 (13) SCC 236) the monthly income of the appellant can be safely fixed as Rs.4,000/- because even for a coolie the Apex Court fixed Rs.4,500/- as monthly income in the year 2004. In the light of the judgment in National Insurance Company Ltd., V. Pranay Sethi [2017 (4) KLT 662 (SC)] towards future prospects of earning capacity, 40% is to be added. If that is the case the monthly income of the appellant can be safely assessed as Rs.5,600/-. Based on this monthly income and, permanent disability of the appellant, the compensation for disability can be assessed in the following manner.

$Rs.5600 \times 12 \times 15 \times 40 / 100 = Rs. 4,03,200/-$ .

10. The appellant is entitled interest at the rate of 7.5% per annum for the above amount. Towards loss of earning the Tribunal assessed compensation for a period of six months @ Rs.2,500/-. Consequently, a change is necessary on that head. It can be reassessed in the following manner.

$Rs.4,000/- \times 6 = Rs.24,000/-$ .

11. From the above amount the amount already granted is to be deducted. Thus it will be Rs.9,000/- (Rs.24,000- Rs.15,000).

12. Even though the counsel for the appellant argued that he is entitled more compensation on the other heads also, after perusing the impugned award and also considering the entire facts and circumstances of the case, according to me no interference is necessary on the other heads. Therefore, the appellant is entitled an enhanced compensation of Rs.4,12,200/- (Rs.4,03,200/- +Rs.9,000/-). The appellant is entitled interest @ 7.5% per annum for the enhanced compensation.

13. In the result, M.A.C.A.3093/2008 is allowed in part and the impugned award is modified. The appellant is entitled enhanced compensation of Rs.4,12,200/- with interest @ 7.5% per annum from the date of application till realisation. The third respondent is directed to pay the enhanced compensation with interest to the petitioner/claimant.

M.A.C.A.No.461/2009 is allowed. The third respondent New India Insurance Company Ltd., can recover the compensation amount and the enhanced compensation with interest from the first respondent.