IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 14TH DAY OF JULY 2021 / 23RD ASHADHA, 1943

MACA NO. 2787 OF 2014

AGAINST THE AWARD DATED 10.06.2014 IN OPMV 203/2011 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, PATHANAMTHITTA

APPELLANT:PETITIONER

BALAN R.
S/O.RAMAN, KODASSERY CHELLIKUZHY, POOKULANJI.P.O.
BY ADV SRI.A.N.SANTHOSH

RESPONDENTS:RESPONDENTS

1 ABHIRAJ R.
S/O.RAVI R, K.P.SADANAM, PUTHUVEETTILPADI BHAGOM, KONNAMONKARA, ADOOR.P.O-691 523.

2 VASUDEVAN E.N
CHITRA SADAN, THENGAMOM.P.O., SOORANADU VIA.-690 522.

3 THE BRANCH MANAGER
ORIENTAL INSURANCE CO. LTD., P.B.NO.17, POST OFFICE JUNCTION, PUNALUR-691 305.

BY ADV SRI.R.AJITH KUMAR VARMA FOR R3

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 14.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

A. BADHARUDEEN, J.

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M.A.C.A No.2787 of 2014

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Dated this the 14th day of July, 2021

J U D G M E N T

The petitioner in O.P(MV) No.203 of 2011 on the files of the Motor Accidents Claims Tribunal, Pathanamthitta is the appellant herein and he impugns the award dated 10.06.2014 passed by the Tribunal. The respondents in the Original Petition were arrayed as the respondents herein.

2. Heard both sides.

3. Brief facts of the case :

The petitioner, who was a pedestrian standing on the side of K.P Road, near KSRTC Junction, Adoor, was alleged to be hit

down by a Maruti car bearing Reg.No.KL-26/A-1819, driven in a rash and negligent manner by the 1st respondent who was the driver of the Maruti car. The petitioner would contend that he sustained very serious injuries. Consequently, he was treated also. The petitioner claimed Rs.2 lakhs from the Tribunal.

4. On anxious consideration of the matter based on available evidence, the Tribunal fixed Rs.1,60,580/- as the amount of compensation entitled by the petitioner. However, the Tribunal granted only Rs.80,290/- (50%) on finding 50% contributory negligence on the part of the petitioner.

5. The learned counsel for the appellant/petitioner disputed the finding of the Tribunal on 2 grounds. First of all he submitted that the finding of the Tribunal as to contributory negligence on the part of the petitioner is erroneous. According to him, as per Ext.A5 Police charge in Crime No.25/2011 of Adoor Police Station, laid after due investigation, the Police

attributed negligence against the 1st respondent, the driver of the Maruti Car. But the Tribunal given emphasize to the scene mahazar as well as vehicle mahazar marked as Exts.A2 and A3 and thereby found that the petitioner abruptly crossed the road and contributed the accident. He fervently opposed this finding.

6. The learned counsel for the petitioner highlighted the decisions reported in ***Fazal Mahmood v. Rasheed*** [2015 (2) KLT 266, ***New India Assurance Co. Ltd. v. Pazhaniammal*** [2011 (3) KLT 648] to contend that production of charge sheet is prima facie sufficient evidence of negligence for the purpose of claim under Section 166 of the Motor Vehicles Act. If any of the parties do not accept such charge sheet, burden must be on such party to adduce evidence. According to the learned counsel, this position was reiterated in a subsequent decision of this Court in ***Kolavan v. Salim*** [2018(1) KLT 489].

7. He also submitted that presence of `smell of alcohol' in

the wound certificate of the petitioner is another reason for the Tribunal to find contributory negligence. According to the learned counsel for the petitioner, in the decision reported in ***Jose v. United India Insurance Co. Ltd.*** [2015 (4) KLT 706], `smell of alcohol' recorded in the wound certificate is not a ground to find contributory negligence. He also pointed out that if the pedestrian was on the middle of the road at the time of the accident, the same also is not a ground to find contributory negligence. In this connection, the learned counsel for the appellant/petitioner relied on the decision reported in ***Balakrishnan Nair v. Vijayan*** [2020 (2) KLT 585].

8. Though the learned counsel for the insurance company attempted to substantiate the finding of the Tribunal on the basis of the narration of the scene mahazar, I cannot accept the argument for multiple reasons. In this context it is apposite to extract the relevant portion of the verdict of this Court pointed out by the

learned counsel for the petitioner.

(1) In ***New India Assurance Co. Ltd. v. Pazhaniammal*** [2011 (3) KLT 648] it was held as under:

> *As a general rule it can safely be accepted that production of the police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under S.166 of the Motor Vehicles Act. A system cannot feed itself on a regular diet of distrust of the police. Prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence. If oral evidence is adduced by any party, in a case where charge sheet is filed, the Tribunals should give further opportunity to others also to adduce oral evidence and in such a case the charge sheet will pale into insignificance and the dispute will have to be decided on the basis of the evidence. In all other cases such charge sheet can be reckoned as sufficient evidence of negligence in a claim under S.166 of the Motor Vehicles Act. We mean to say that on production of such charge sheet the shifting of burden must take place. It is not as though we are not conscious of the dangers and pit falls involved in such an approach. But we feel that adoption and recognition of such practice would help to reduce the length of the long queue for*

justice before the Tribunals. The judicial recognition of the practice will help the Tribunals to ensure the optimum use of judicial time at their disposal for productive ventures. We do not intend to say that collusive charge sheets need be accepted. Wherever on the facts of a given case the Tribunals feel that the police charge sheet does not satisfy their judicial conscience, the Tribunals can record that the charge sheet cannot be accepted and can call upon the parties, at any stage, to adduce oral evidence of the accident and the alleged negligence. In such a case, the issue negligence must be decided on the other evidence, ignoring the charge sheet.

(2) In ***Fazal Mahmood v. Rasheed*** [2015(2) KLT 266], it was held as follows:

We are of the view that the Tribunal, without any further material, could not have relied on the contents of the scene mahazar (Ext.B2) to contradict that final report of the investigator to say that the accident occurred due to the negligence of the rider of the motorcycle on which the deceased was pillion riding. We say this pointedly, also because the Tribunal proceeded as if there was evidence as to from which direction each of the vehicles came to the spot of the accident. There is nothing in the scene mahazar indicating this aspect.

(3) In ***Kolavan v. Salim*** [2018(1) KLT 489] it was held as

follows :

> *In the absence of any direct or corroborative evidence, the Tribunal will not be justified in drawing any conclusion about the negligence on the part of any individual on the basis of the scene mahazar. Therefore, the practice of attributing negligence to any person merely relying on the recitals in the scene mahazar, in the absence of any direct or corroborative evidence, must be deprecated.*

4. In ***Jose v. United India Insurance Co. Ltd.*** [2015(4) KLT 706] it was held as follows:

> *The finding entered by the learned Tribunal that there was contributory negligence on the part of the appellant cannot be accepted for reasons. It is a common law right of every citizen of this country to use the public streets. It is only usual and necessary for the citizens to use the road for walking, crossing from one side to the other and in many other ways. While using the road in those ways by the citizens, a driver is not entitled to drive his vehicle negligently so as to injure those citizens. A driver should take that much care while driving the vehicle so as to avoid any possible or probable accident on the road. Had the driver of the car involved in this accident taken the required care, the accident would not have occurred. Therefore, the negligence on the part of the driver of the car*

alone had caused the accident.

It was held therein further that :

The entry made by the doctor in the wound certificate that smell of alcohol was present in the breath of the appellant cannot be a reason for finding that he was under the influence of alcohol rendering him unable to keep himself proper and stable and contributing to the cause of accident. Drinking of alcoholic beverages is not a prohibited thing in this democratic country. But the crucial question is as to whether after drinking alcohol, the appellant had actually contributed to the cause of accident by his deeds while using the road. Here, there is absolutely no evidence to show that he was under the influence of alcohol or he had conributed to the cause of accident. For these reasons, the finding entered by the learned Tribunal that there was contributory negligence on the part of the appellant cannot be accepted.

5. In ***Balakrishnan Nair v. Vijayan*** [2020(2) KLT 585] it was held as follows:

The doctrine of `reasonable care' imposes an obligation or a duty upon the 2nd respondent driver to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years or a

> *senior citizen like the appellant. Therefore, merely for the reason that the accident occurred near the traffic island situated on the middle of the public road, while the appellant was crossing the road, it cannot be concluded that the accident happened due to contributory negligence on the part of the appellant.*

9. In fact, the ratio of the decisions referred above precisely settled the evidentiary value of police charge in a claim under Section 166 of the Motor Vehicles Act and also the law regarding contributory negligence against a pedestrian on the road at the time of the accident. Going by the decision in ***Pazhaniammal*'s** case (*supra*), ***Fazal Mahmood v. Rasheed*** (*supra*) and ***Kolavan***'s case (*supra*), production of police charge sheet is prima facie sufficient evidence to find negligence in a claim under Section 166 of the Motor Vehicles Act. Deviation from police charge is possible only when evidence is adduced to disbelieve the charge sheet.

10. Similarly, going by the decision in ***Balakrishnan Nair***

v. Vijayan's case (*supra*), merely for the reason that the accident occured while a pedestrain was crossing the road and the same happened on the road are not grounds to find contributory negligence on the part of the pedestrian unless convincing evidence to substantiate negligence on the part of the pedestrian if not adduced otherwise.

11. Coming to the ratio of ***Jose v. United India Insurance Co. Ltd.***'s case (*supra*), the entry made by the Doctor in the wound certificate that `smell of alcohol' was present in the breath of the appellant cannot be a reason to find that he had contributed the accident as the said finding is not akin to hold that the person was under the influence of alcohol or he had contributed the accident.

12. In view of the legal position, the Tribunal went wrong in attributing 50% negligence on the part of the petitioner, who was a pedestrain just on the side of the road without support of any convincing evidence to hold so. Therefore, the said finding

found to be not justified. As such the same is liable to be set aside. Consequently, it is held that the 1st respondent, the driver of Maruti car bearing Reg.No. KL-26/A-1819 is fully negligent in the matter of accident. It is relevant to note that the Tribunal found 50% contributory negligence and reduced the compensation accordingly. In view of the finding that the 1st respondent alone was negligent in the matter of the accident, the petitioner is entitled to get compensation in full.

13. The second challenge is on the quantum of compensation granted by the Tribunal. According to the learned counsel for the petitioner, the monthly income fixed by the Tribunal as Rs.3,500/- is on lower side. He relied on the decisions reported in ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited*** [(2011) 13 SCC 236] and ***Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.*** [(2014) 2 SCC 735] and canvassed Rs.8,000/- as monthly

income in this case where the accident was taken place during 2011. This aspect was not seriously disputed by the learned counsel for the insurance company in view of the ratio of the above rulings.

14. Therefore, following the ratio of the above rulings, it is fair and reasonable to refix the monthly income of the petitioner as Rs.8,000/- for the purpose of granting compensation.

15. It is submitted by the learned counsel for the appellant/petitioner further that the petitioner, who was subjected to serious injuries, viz. Type I compound fracture both bone (L) leg and deformity (L) leg, underwent treatment for 73 days. But the Tribunal granted only 3 months' loss of earnings. According to the appellant/petitioner, loss of earnings for at least 6 months ought to have been granted. This claim was opposed by the learned counsel for the insurance company on the submission that 3 months' loss of earnings granted by the Tribunal is justifiable.

16. Going by Ext.A9 discharge card, issued from General Hospital, Pathanamthitta, it could be seen that the petitioner was inpatient there for a period of 73 days. If so, the learned counsel for the petitioner is justified in canvassing more amount under the head loss of earning. Therefore, I am inclined to increase the same upto 5 months. So, the petitioner is entitled to get Rs.8,000 X 5 = Rs.40,000/- under the said head, out of which Rs.10,500/- was granted by the Tribunal and hence **Rs.29,500/- more** is to be granted to the appellant/petitioner under the head loss of earnings.

17. Coming to grant of the disability income, there was no dispute raised as to the percentage of disability fixed at 30% as per Ext.A6 disability certificate issued from District Hospital, Kozhencherry. Similarly, the multiplier taken by the Tribunal was also disputed. However, the disability income calculated by the Tribunal requires to be reassessed since the monthly income of the petitioner is refixed as Rs.8,000/-. Therefore, the disability income

is recalculated as : 8000 X 12 X 13 X 13/100 = Rs.1,62,240/-, out of which Rs.70,980/- was granted by the Tribunal and the balance **Rs.91,260**/- is liable to be granted **more** under the head disability income.

18. The learned counsel for the appellant/petitioner submitted that the compensation granted under the head `pain and suffering' is also on lower side. On perusal of the award, Rs.30,000/- was awarded under the head pain and suffering. The learned counsel for the insurance company submitted that Rs.3,000/- was the amount claimed under the above head and therefore the Tribunal could not be found fault with for the amount granted under the above head.

19. On analysing the question as to whether increase in pain and suffering is liable to be granted, I am inclined to refer the decision reported in ***National Insurance Company Limited v. Pranay Sethi and Ors.*** [(2017) 16 SCC 680], where the Apex

Court held that just compensation is the principle to be followed in cases of motor accidents and therefore there is no reason to restrict the amount otherwise entitled on the ground that the amount claimed under a particular head was less than entitled. In view of the matter, I am inclined to enhance the compensation for `pain and suffering' to Rs.45,000/-. Since Rs.30,000/- was granted by the Tribunal, the appellant/petitioner is entitled to **Rs.15,000/- more** under this head. The learned counsel for the appellant/petitioner canvassed increase under the head bystander's expenses in this case where hospitalisation was for a period of 73 days. The learned counsel for the petitioner submitted that Rs.300/- per day is usually being granted under the head bystander's expenses in the case of accident during 2011. This submission appears to be convincing and therefore the said amount as such ought to have been granted by the Tribunal. The learned counsel for the insurance company also not disputed this fact. In view of

the matter, I am inclined to modify the award under the head bystander's expenses by fixing the same @ Rs.300/- per day. Accordingly, the amount under the head bystander's expenses would come to : 73 days X 300 = Rs.21,900/-, out of which Rs.12,000/- was granted by the Tribunal and hence **Rs.9,900/- more** is liable to be granted. The learned counsel for the petitioner also canvassed increase under the head extra nourishment as well as loss of amenities. Reasonable increase on the head extra nourishment is liable to be granted. In view of the matter, I am inclined to grant **Rs.5,000/- more** under the head extra nourishment. So, the petitioner is entitled to get compensation of **Rs.1,50,660/-** as the enhanced compensation.

20. Since contributory negligence found out by the Tribunal against the petitioner is set aside, the petitioner is entitled to get a total sum of Rs.2,81,740/- with 9% interest, which shall be deposited by the 3rd respondent within a period of two months from

the date of petition till date of realisation or deposit. It is ordered further that the petitioner is liable to pay Rs.1,966.90 (Rupees One thousand nine hundred sixty six and paise ninety only) in excess of the court fee paid in view of the enhancement in the compensation. Therefore, the insurance company is directed to deposit the court fee under the enhanced amount also. On deposit, the petitioner can realise the same forthwith.

21. Therefore, the award is modified and enhancement granted as follows:

Sl. No.	Head of claim	Amount awardedby the Tribunal	Modified award amount
1	Loss of future earnings	Rs. 70,980.00	Rs. 1,62,240.00
2	Loss of earnings	Rs. 10,500.00	Rs. 40,000.00
3	Transport to hospital	Rs. 1,000.00	Rs. 1,000.00
4	Extra nourishment	Rs. 3,000.00	Rs. 8,000.00
5	Damage to clothing and articles	Rs. 1,000.00	Rs. 1,000.00
6	Others: (a) Medical expenses	Rs. 6,100.00	Rs. 6,100.00
	(b) Bystander's expenses	Rs. 12,000.00	Rs. 21,900.00

7	Pain and sufferings	Rs. 30,000.00	Rs. 45,000.00
8	Permanent disability	Rs. 26,000.00	Rs. 26,000.00
	Total	Rs. 1,60,580.00	Rs. 3,11,240.00

22. In the result:

a) This M.A.C.A is allowed;

b) The appellant/petitioner is found entitled to a further amount of ***Rs.1,50,660/- (Rupees One lakh fifty thousand six hundred and sixty only)*** in addition to the amount already awarded by the Tribunal under the impugned award;

c) The entire amount of compensation shall carry interest at the rate of 9% from the date of petition till the date of deposit or realisation;

d) The 3rd respondent/insurer is directed to deposit the entire amount of compensation within a period of two months from this date by separate cheques in the name of Motor Accidents Claims Tribunal, Pathanamthitta for the court fee payable and in the name of the petitioner for the remaining amount with interest.

Sd/-

(A. BADHARUDEEN, JUDGE)

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