

Even If Driver Is Drunk, Insurer Liable To Third Party: Kerala High Court

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

SOPHY THOMAS; J.

MACA NO. 616 OF 2018; 30 January 2023

MUHAMMED RASHID @ RASHID versus GIRIVASAN E.K.

Appellant / Petitioner by advs. T.G. Rajendran, Ann Susan George, T.R. Tarin, V.A. Vinod

Respondents by adv Abhijett Lessli, M.A. George, Standing Counsel

JUDGMENT

The claimant in OP(MV) No. 646 of 2014 on the file of the Motor Accidents Claims Tribunal-II, Manjeri, is the appellant herein. He is impugning the award dated 06.01.2018 on the ground of inadequacy of compensation.

2. The appellant, while travelling in an autorickshaw, met with a road traffic accident on 19.12.2013, at 3.10 p.m. KL-10/AD-1819 car driven by the 1st respondent, in a rash and negligent manner, dashed against the autorickshaw, in which he was travelling and he was thrown out to the road, and he sustained serious injuries. He was admitted and treated for seven days at Al-Shifa Hospital, Perinthalmanna, and even after discharge, he had to take rest for six months. He was a driver by profession earning monthly income of Rs.12,000/-. Though he approached the Tribunal claiming compensation of Rs.4,00,000/-, the Tribunal awarded only Rs.2,40,000/-, against which he has preferred this appeal.

3. The 1st respondent was the driver of the offending car. The 2nd respondent was its owner and the 3rd respondent was its Insurer. The accident, injuries and the Policy of the offending vehicle are not in dispute. Respondents 1 and 2, the driver and owner of the offending car, remained *ex parte* before the Tribunal as well as before the appellate court. No oral evidence was adduced from either side before the Tribunal. Exts.A1 to A7 series and B1 to B3 were marked before the Tribunal.

4. Now let us have a re-appraisal of the facts and evidence to find out whether there is any illegality and impropriety in the award impugned

5. Heard learned counsel Sri.T.G.Rajendran appearing for the appellant, and Sri.Abhijett Lessli, learned standing counsel appearing for the 3rd respondent Insurance Company.

6. According to the appellant, he was a driver by profession, aged only 25, earning monthly income of Rs.12,000/-. Learned Tribunal fixed his notional income @ Rs.7,500/- and loss of earning was assessed for six months only. According to the appellant, the notional income fixed was too low, when compared to his actual income. Though he did not adduce any evidence to prove his actual income, since he was aged only 25 at the time of accident which occurred in the year 2013, going by the decision **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [AIR 2011 SC 2951]**, he was eligible to get his notional income fixed @ Rs.9,000/-. So, for loss of income for six months, he was eligible to get Rs.54,000/-. Since he was already paid Rs.45,000/- by the Tribunal, he is eligible to get the balance Rs.9,000/- under the head 'loss of earning'.

7. Ext.A3 Discharge Certificate issued from Al Shifa Hospital Pvt. Ltd. shows that the appellant had suffered closed fracture of shaft of femur (R), type I open fracture of both bones leg (L) with multiple abrasion. He was admitted on 19.12.2013 and was discharged on 27.12.2013. He preferred the claim petition before the Tribunal on 04.06.2014 and the

award was passed by the Tribunal on 06.01.2018 i.e., after about four years of the accident. No disability certificate was produced by him before the Tribunal. If he had actually suffered any disability due to the injuries he has suffered in the accident, definitely he would have produced the Disability Certificate. Even then, the learned Tribunal awarded Rs.40,000/- towards permanent disability/loss of amenities, even without ascertaining whether there was any disability or loss of amenities.

8. Pending appeal, the appellant filed IA No.1 of 2019 stating that he had suffered disability due to the accident, and so a direction may be given to the Superintendent, Medical Board, Medical College Hospital, Manjeri or any other Medical Board/Medical Expert to assess his disability. This Court, as per order dated 11.11.2022, allowed that IA and directed the appellant to appear before the Superintendent, Medical College Hospital, Manjeri along with all the medical records for subjecting himself for medical examination by the Medical Board constituted by the Superintendent and the Superintendent of Medical College Hospital, Manjeri was directed to constitute a Medical Board to assess the physical disability, if any, of the appellant and to forward the Certificate of Assessment, to the Registry of this Court without delay.

9. Thereafter, the Advocate Clerk of the learned counsel appearing for the appellant filed IA No. 1 of 2022 seeking extension of time for the appellant to appear before the Medical Board, Manjeri, as the appellant had gone abroad in search of a job, and so he was not able to appear before the Medical Board on the date, as directed by this Court. This Court, finding that the appeal was of the year of 2018, and the alleged accident was of the year 2013, and also finding that the appellant was reported to be abroad, dismissed that application, as the Court could not find any *bona fides* in the petition for extension.

10. As of now, there is nothing to show that the appellant suffered any disability due to the injuries he had suffered in the accident, which prevents him from earning income by doing a job. There is nothing to show that due to the injuries he had suffered, there occurred any reduction in his income, which he could have earned otherwise. So, the appellant is not entitled for any compensation under the head 'permanent disability'.

11. The very fact that he was hospitalised for seven days and he incurred medical expenses to the tune of Rs.1,14,596/- will show that the injuries were severe and treatment was extensive. Discharge summary shows that he had suffered fracture of shaft of femur right, and both bone fracture of left leg. So, towards pain and suffering, this Court is inclined to award Rs.20,000/- more.

12. Towards bystander expenses, he was given Rs.500/- per day for ten days, totalling Rs.5,000/-. Since there was fracture of both bones of left leg and fracture of shaft of femur right, even after discharge from hospital, he might have been in need of a bystander, to perform his ordinary pursuits. Considering that fact, this Court is inclined to award Rs.10,000/- more towards bystander expenses, for 20 days more at the rate of Rs.500/- per day.

13. The compensation awarded under all other heads seems to be just and reasonable and so it needs no interference.

Head of claim	Amount awarded by the Tribunal	Amount awarded in appeal	Difference to be drawn as enhanced compensation
Loss of earning	Rs.45,000/-	Rs.54,000/-	Rs.9,000 /-
Pain and sufferings	Rs.25,000/-	Rs.45,000/-	Rs.20,000/-

Bystander expenses	Rs.5,000/-	Rs.15,000/-	Rs.10,000/-
Total			Rs.39,000/-

14. In the result, the appellant is entitled to get enhanced compensation of Rs.39,000/- (9000 + 20000+ 10000).

15. The 3rd respondent is admitting the fact that the offending vehicle was duly insured with them as on the date of accident; but they are not liable to indemnify the insured as the 1st respondent, at the time of accident, was driving the vehicle under the influence of alcohol. That fact was not disputed, either by the driver or owner of the offending vehicle. Ext.B2 copy of chargesheet and Ext. B3 copy of Petty Case Charge Sheet filed against the driver of the offending vehicle show that he was driving the car in a drunken state. But Ext.B1 Insurance Policy clearly shows that the offending vehicle was duly insured with the 3rd respondent as on the date of accident.

16. So, the learned Tribunal directed the 3rd respondent Insurance Company to pay the compensation amount to the appellant and permitted the Insurance Company to recover the same from respondents 1 and 2, the driver and owner of the offending vehicle.

17. Regarding the question of violation of the terms and conditions of Insurance Policy, and the liability of the insurance company to indemnify and to recover the same from the insured, the Apex Court in **New India Assurance Co. v. Kamala & Others** [(2001) 4 SCC 342], held that When a valid Insurance Policy has been issued in respect of a vehicle as evidenced by a Certificate of Insurance, the burden is on the insurer to pay the third parties, whether or not there has been any breach or violation of the Policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured, if as per the Policy conditions the insurer had no liability to pay such sum to the insured.

18. In **Oriental Insurance Company Limited v. Nanjappan** [(2004) 13 SCC 224], the Apex Court held that, When there is a violation to the terms and conditions of the Policy, Insurance Company is held to be not liable, but Insurance Company has to pay the awarded Compensation and recover the same from the insured by initiating the proceedings before the Executing Court to protect and safeguard the interests of Insurance Company.

19. In **Bajaj Allianz General Insurance Co.Ltd., rep by its Deputy Manager (Legal) vs. Manju Devi and Others** [2014 SCC OnLine AP 232], a Division Bench of the High Court of Andhra Pradesh held that '*Even if there is any violation of terms and conditions of the Policy, the Insurance Company is under an obligation to satisfy the claim of Third parties; since the liability of the Insurance Company during subsistence of the liability under the Policy is statutory in nature and at best, the Insurance Company has to satisfy the Compensation and recover the same from the insured.*'

20. Even if, there is a condition in the Policy Certificate that driving of a vehicle in an intoxicated condition is violation of the terms and conditions of the Policy, still the Insurance Company is liable for payment of compensation. Undoubtedly, when the driver is in an inebriated state, certainly, his consciousness and senses will be impaired so as to render him unfit to drive a vehicle. But the liability under the Policy is statutory in nature and so the Company is not liable to be exonerated from payment of compensation to the victim.

21. In **Bajaj Allianz's** case cited (*supra*), the High Court of Andhra Pradesh considered this issue, and held that the Insurance Company cannot avoid its liability totally on account of drunken driving of the driver, as it is not a ground to exonerate the Insurance Company from payment of compensation as far as third parties are concerned; as the policy is statutory in nature.

22. Ext. B1, the Insurance policy stipulates the condition that the Insurance Company shall not be liable to make any payment in respect of any accidental loss or damage suffered whilst the insured or any person driving the vehicle with the knowledge and consent of the insured is under the influence of intoxicating liquor or drugs. Since the offending vehicle was validly insured with the 3rd respondent-Insurance Company and the appellant/claimant is a third party, the Company is liable to compensate him initially; but the Company is eligible to recover the same from respondents 1 and 2.

23. As far as a third party is concerned, the Insurance Policy with regard to liability to pay compensation is enforceable, as he is not supposed to know about the intoxicated state of the driver. Therefore, the violation of Policy conditions will not exonerate the Insurance Company from payment of compensation to third parties, though the car was driven by the driver in a drunken state. As already found, respondents 1 and 2, the driver and owner of the offending vehicle, remained *ex parte* throughout. Exts.B2 and B3 clearly show that the 1st respondent drove the car in a drunken state and he was chargesheeted for drunken driving. The 2nd respondent owner permitted the 1st respondent driver to drive the vehicle in a drunken state and so, he is also vicariously liable for the act of the 1st respondent. So ultimately the liability is of respondents 1 and 2, though the 3rd respondent-Insurance Company has to make the payment initially.

24. In the result, the 3rd respondent insurer is directed to deposit the enhanced compensation of Rs.39,000/- (Rupees Thirty Nine Thousand only) in the bank account of the appellant with interest at the rate of 7% per annum from the date of petition till the date of deposit, within a period of 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 the appellant towards Tax, balance court fee and legal benefit fund. The 3rd respondent can recover the amount so deposited from respondents 1 and 2 and their assets.

The appeal is allowed accordingly. No order as to costs.

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