IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

MACA.No. 276 of 2006 (E)

AGAINST THE AWARD IN OP(MV)No.675/2001 OF MACT MUVATTUPUZHA
DATED 28-06-2005

APPELLANT/PETITIONER::

SIDHARDHAN, S/O. RAJAPPAN,
AGED 32 YEARS, CHALIL HOUSE, AVOLY,
MUVATTUPUZHA.

BY ADV. SRI.N.N.ELAYATH

RESPONDENTS/RESPONDENTS::
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* 1. P.A. PAREED, [DELETED]
PROPRIETOR, BASP INDUSTRIAL CORPORATION,
PEZHAKKAPPILLY, MUVATTUPUZHA.

* 2. MUHAMMED, S/O. PAREED MYTHEEN, [DELETED]
MEENAMATTATHU HOUSE, PAIPRA KARA, MULAVOOR,
MUVATTUPUZHA.

3. THE BRANCH MANAGER,
THE ORIENTAL INSURANCE CO. LTD., MUVATTUPUZHA.

* 4. C.R. SULUMON, S/O. RAJAPPAN, [DELETED]
THIRUMALACHALIL HOUSE, RANDAR P.O., MUVATTUPUZHA.

* 5. PRASANTH, S/O. GOVINDANKUTTAN, [DELETED]
PADINJAREKKARA HOUSE, MANIYANTHADAM, MANJALLOOR.

* 6. THE BRANCH MANAGER, [DELETED]
THE NATIONAL INSURANCE CO. LTD., THODUPUZHA.

* [Respondent Nos.1, 2, 4, 5 and 6 are deleted from the party array,
vide order dated 10.9.2015 in I.A.No.2627/2015 in M.J.C.No.365/2009 in
M.A.C.A.276/06.]

R3 BY ADV. SRI.M.JACOB MURICKAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.276 of 2006

Dated this the 3rd day of November, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal arises from the award dated 28.6.2005 passed by the M.A.C.T., Muvattupuzha in O.P.(M.V.)No.675 of 2001. The grievance is as to the inadequacy of compensation in respect of the injuries sustained by the appellant in a road traffic accident occurred on 22.1.2001.

2. The factual sequence disclosed from the proceedings is that the appellant was travelling as a passenger in an autorickshaw bearing registration No.KL-7/R.5215, when there occurred a collision between the autorickshaw and lorry bearing registration No.KL-7/F.7029 leading to serious injuries and hospitalisation for about 14 days. This was sought to be compensated by filing a claim petition, arraying the parties of both the vehicles in the party array. On culmination of the evidence, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the lorry and the liability was fixed accordingly. The Tribunal awarded

amounts under different heads granting a total sum of ₹45,500/-, which was directed to be satisfied with interest @ 6% per annum. In the connected case filed by the brother of the appellant herein, who was also travelling in the autorickshaw at the relevant time and sustained injuries, had preferred O.P.(MV)No.705 of 2001, wherein, based on the said findings and considering the relevant facts and figures, a total sum of ₹6,000/-was awarded as compensation, which is also ordered to be satisfied with the interest @ 6% per annum as per the common award dated 28.6.2005.

3. The insurance company had put up a case that the driver of the lorry did not have valid driving licence at the relevant time and that there was violation of the statutory/policy conditions and hence that the insurance company was not liable to satisfy the claim. It is seen that some proceedings were filed before the Tribunal to cause production of driving licence and since the factual position was not established to the contrary, the insurance company was granted the right to recover the amount from the owner, after satisfying the claim towards the claimant.

4. Being aggrieved by the said verdict, the owner of the vehicle approached this Court by filing M.A.C.A.No.1816 of 2006 pointing out that the driver of the lorry was having valid and effective driving licence on the date of the accident and that the lapse occurred in not producing the same before the Tribunal was an inadvertent one, thus seeking indulgence of this Court to interfere with the award and to have the liability shifted to the shoulders of the insurance company. Since the amount awarded by the Tribunal in the connected case was less than ₹10,000/-, no appeal was maintainable by virtue of mandate under Section 173 of the Motor Vehicles Act, 1988 and in the said circumstances, the owner of the vehicle approached this Court by filing W.P.(C)No.27998 of 2006, which was clubbed along with the other appeal. The above appeal and the writ petition came up before this Court on 14.8.2009 and after hearing both the sides, considering the particular nature of the contentions raised from the part of the owner of the vehicle, the awards were intercepted and the matter was remanded with a limited purpose to consider the question whether there was a valid licence for the driver of

the lorry belonging to the appellant/petitioner at the time of the accident. It was directed to be considered after granting an opportunity to both the sides to adduce evidence. In the concluding paragraph, it was made clear that the scope of remand was only to arrive at a finding as to the above aspect, in so far as the recovery right was conferred upon the insurance company and that this Court was not interfering with the finding on negligence and on the quantum arrived at by the Tribunal in both the cases.

5. Pursuant to the remand, the matter was considered in detail by the Tribunal and a modified award was passed; a copy of which has been produced as Annexure-I along with I.A.No.2627 of 2015 by the appellant. As per the said award, the finding on negligence and quantum was never varied by the Tribunal in view of the specific direction in the verdict passed by this Court on remand, but modification was made with regard to the liability to be satisfied. In other words, based on the finding that the driver of the lorry was having a valid and effective driving licence, the earlier finding as to the violation of

statutory/policy condition was intercepted and the right given to the insurance company to recover the due amount from the owner, after satisfying the claim towards the victim was withdrawn. It was also observed in paragraph 10 of the modified award, that by virtue of the specific mandate in the remand order passed by this Court, no variation with regard to the quantum was possible. This in turn is under challenge in this appeal.

6. Heard both the sides.

7. The learned counsel for the insurance company submits that the appeal preferred by the claimant seeking for enhancement of compensation is no more liable to be entertained, as the matter has already become final by virtue of the remand ordered by this Court passing a common judgment dated 14.8.2009 in M.A.C.A.No.1816 of 2006 and W.P.(C) No.27998 of 2006. Pursuant to the said verdict, the matter was considered by the Tribunal, arriving at a clear finding in paragraph 10 of the modified award, that enhancement of compensation was not possible. The said verdict has not been subjected to challenge by the claimant, in the absence of which,

the relief sought for in the present appeal is not liable to be entertained.

8. The above proposition is vehemently opposed by the learned counsel for the appellant, pointing out that the scope of remand ordered by this Court on 14.8.2009 in the appeal/writ petition filed by the owner of the vehicle was whether the right of recovery given to the insurance company could be sustained, in view of the specific assertion by the owner of the vehicle that the driver of the lorry having a valid and effective licence on the relevant date. In other words, when the Court remanded the matter observing that the finding on negligence or quantum was not interfered with, the Tribunal was instructed to follow the specified track and nothing more. At the same time, the quantum originally fixed by the Tribunal was already under challenge by the claimant, by filing the present appeal as early as on 16.1.2006 and the same was pending consideration before this Court. Quite unfortunately, pendency of this matter was not noted when the remand order was passed in the other case. In any view of the matter, in so far as the adequacy of

compensation was never a subject matter of consideration in the appeal or in the writ petition filed by the owner of the lorry, the principles or resjudicate or such other hurdle can never bar the way of the claimant in pursuing this matter. We find considerable force in the said submission as discussed below.

9. Admittedly, the appeal preferred by the claimant was pending right from the year 2006, challenging the quantum fixed by the Tribunal. On going through the cause title of the common verdict dated 14.8.2009 in M.A.C.A.No.1816 of 2006 and W.P.(C).No.27998 of 2006, it is seen that no representation of the 1st respondent in the appeal was seen recorded when the matter was finalized on 14.8.2009. It was on the same day, that the present appeal preferred by the claimant came to be dismissed for default, for having no representation. Subsequently, M.J.C.No.365 of 2009 filed by the appellant/claimant was allowed as per order dated 10.9.2015 and as such, the merit involved, if any, in the present appeal required to be considered; more so when adequacy of the compensation was never considered by this Court while remanding the matter as per the verdict in

M.A.C.A.No.1816 of 2006 and W.P.(C)No.27998 of 2006 directing the Tribunal to consider the limited question of existence of any valid driving licence and as to the right of recovery given to the insurance company. In short, consideration of the issue involved in the present appeal as to the adequacy of the compensation is not adversely affected in any manner by the remand ordered by this Court as per judgment dated 14.8.2009. In other words, if enhancement is ordered in this appeal, the finding arrived at by the Tribunal pursuant to the remand, as to the existence of valid driving licence and the liability of the insurance company to indemnify the insured in respect of the accident will automatically be pressed into service.

10. Coming to the quantum of compensation payable, the case of the appellant/claimant was that he was a self-employed youth of 28 years on the date of accident. The injuries sustained are as given below:-

> Lacerated wound 2 cm. x ½ cm. middle 3rd shin (Rt)
> Lacerated wound 2 cm. x ½ cm. (Rt.) side chin
> Abrasion (deep) forehead (Rt) side.

The amounts awarded by the Tribunal under various heads are as given below:-

Loss of earning	₹4,500/-
Expenses for transportation to hospital	₹1,000/-
Damage to clothes	₹500/-
Medical expenses	₹24,000/-
Extra nourishment	₹1,000/-
Bystander expenses	₹1,500/-
Pain and suffering	₹8,000/-
Loss of amenities	₹5,000/-

Total	₹45,500/-
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11. It is true that no evidence was adduced by the appellant as to his income. Considering the economic situation prevailing on the date of accident, we find that the Tribunal could have reckoned ₹2,500/- as the monthly income in respect of the person aged 28 years and we reckon the same accordingly. Considering the nature of injuries, we find that temporary loss of earnings to an extent of 4 months ought to have been satisfied. Thus, the amount payable under this head will come to ₹10,000/-

and after giving credit to sum of ₹4,500/- awarded by the Tribunal, the balance is **₹5,500/-**. We find that the compensation awarded for pain and suffering is much on the lower side, which requires to be enhanced to ₹15,000/-. After giving credit to the sum of ₹8,000/- awarded by the Tribunal, the balance is **₹7,000/-** under this head. Similarly, towards loss of amenities, we find that an additional sum of **₹10,000/-** is necessary and we award the same. Thus total balance compensation payable comes to **₹22,500/-**. The said enhanced amount requires to be satisfied with interest. It is seen that the Tribunal awarded interest only @ 6% per annum, but going by the decisions of the Apex Court prevailing at the relevant time, it should have been 7.5%. But subsequently, it has been made clear by the Supreme Court that the interest payable should be @ 9%. Striking a balance, we make it clear that the entire award amount will carry interest @ 8%. But the learned counsel for the insurance company points out that the appeal preferred by the appellant was dismissed for default on 14.8.2009 and the same was subsequently restored on allowing the M.J.C.No.365 of 2009, as per order dated 10.9.2015. This being the position, since there is no lapse on the part of the insurance company in this regard, the company might not be compelled to satisfy interest for the said period, submits the learned counsel. We find considerable force in the said submission. In such circumstances, we make it clear that the Insurance company is not liable to satisfy interest for the period of default occurred on the part of the appellant, i.e., from 14.8.2009 to 10.9.2015. The due amount shall be worked out and the same shall be deposited by the 3rd respondent/insurance company within a period of one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of accordingly.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

Sd/-
ANIL K.NARENDRAN, JUDGE

skj