

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

MACA.No. 383 of 2005 ()

AGAINST THE AWARD IN OPMV 1749/1999 of MACT, IRINJALAKUDA DATED 25-08-2004

APPELLANT(S)/APPELLANT/PETITIONER:

**PAULSON, S/O.ANTONY, KALLINGAL HOUSE,
TRIPUNITHURA, ERNAKULAM DISTRICT.**

BY ADV. SRI.T.N.MANOJ

RESPONDENT(S)/RESPONDENTS:

- 1. A.P.ASHRAF, S/O.AVOUTTY,
PUTHENPEEDIKAYIL HOUSE, P.O.VADAKKEKAD, THRISSUR.**
- 2. SAJU, S/O.JOSEPH,
KANDAMVEETIL HOUSE, P.O.VADATTUPARA, DEVIKULAM
KOTHAMANGALAM.**
- 3. THE MANAGER, NATIONAL INSURANCE CO LTD.,
SREE NARAYANA TOURIST BUILDING P.B.NO.42
GURUVAYOOR.**

R3 BY ADV. SRI.K.B.RAMANAND

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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**P.R.RAMACHANDRA MENON
&
BABU MATHEW P.JOSEPH, JJ.**

M.A.C.A. No.383 of 2005

Dated this the 3rd day of August, 2015

JUDGMENT

BABU MATHEW P. JOSEPH, J.

The appellant sustained serious injuries in a motor accident that occurred on 2.7.1999 involving a car driven by him and a tempo van driven by the 2nd respondent, owned by the 1st respondent and insured with the 3rd respondent. He filed a petition before the Motor Accidents Claims Tribunal, Irinjalakkuda, claiming compensation on account of the injuries sustained by him in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the 2nd respondent and awarded a total compensation of Rs.84,336/- under various heads as follows:-

<i>Loss of earnings</i>	-	<i>Rs.18,000/-</i>
<i>Transportation</i>	-	<i>Rs. 500/-</i>
<i>Extra nourishment and bystanders' expenses</i>	-	<i>Rs. 1,800/-</i>
<i>Medical expenses</i>	-	<i>Rs.32,636/-</i>
<i>Pain and suffering</i>	-	<i>Rs.12,000/-</i>
<i>Loss of amenities</i>	-	<i>Rs. 5,000/-</i>
<i>Permanent disability</i>	-	<i>Rs.14,400/-</i>

The 3rd respondent was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 3rd respondent. The 2nd respondent remains absent. Since the insurance cover for the tempo van is admitted by the 3rd respondent, notice to the first respondent is dispensed with.

3. The appellant had sustained type II open fracture of both the bones of his right leg apart from sustaining lacerated wounds on his right chest and left eyebrow. He had undergone a surgery for internal fixation of IM Nail for the fracture. He had undergone inpatient as well as outpatient treatments for the injuries suffered. He was aged 54 at the time of accident. He was then working as an Assistant Manager (Civil) at the FACT, Cochin Division. He was earning a monthly income of Rs.14,542.50/- in September, 1999. He was on leave for a period of 4 ½ months in connection with his treatment.

4. The Tribunal has awarded Rs.18,000/- as compensation for loss of earnings. The appellant has no case that he has actually suffered any loss of income. Since the 4 ½ months leave availed of by the appellant was privilege leave, he was entitled to receive salary during that period. But, the fact remains that the appellant lost 4 ½ months privilege leave as a result of the injuries sustained

in the accident for which he is entitled to compensation. In the facts and circumstances, we are of the view that an amount of Rs.25,000/- will be sufficient compensation under that head. Hence, we enhance Rs.18,000/- allowed to Rs.25,000/-. On considering the nature of injuries and the nature of treatments, we enhance the amount of Rs.12,000/- awarded under the head of pain and suffering to Rs.20,000/-. Similarly, Rs.500/- awarded under the head of transportation is enhanced to Rs.1500/-. The Tribunal awarded only an amount of Rs.1800/- under the heads of extra nourishment and expenses for by standers. In the circumstances, we enhance it to Rs.3000/-. Ext.A15 is a Disability Certificate issued by Dr.Ephraim Ambookan, Orthopaedic Surgeon, in which it is certified that the appellant has a permanent disability of 20%. The doctor was examined as PW2. But, the Tribunal has taken the disability only as 10%. The quantum of disability suffered by the appellant so arrived at by the Tribunal does not call for any interference by this Court. The appellant has no case that he could not continue in the service of FACT or lost any income or promotion , as a result of the accident, during the period of his service with FACT. He retired from FACT on completion of 58 years. A question arises here. After retirement, if he wanted, he could have engaged in some gainful avocation. In that case, his disability caused by the accident may stand in his way even though not prohibiting him fully. The Tribunal, on considering that aspect, for awarding compensation under the head of

permenant disability, fixed his monthly income at Rs.1,500/-. This is insufficient. At least, an amount of Rs.3000/- should be fixed as his monthly income for calculating compensation on account of loss of earning power after retirement. The appropriate multiplier which can be adopted in this case will be 8. Applying the said multiplier, the loss of earning power works out at Rs.28,800/- (Rs.3000 x 12 x 8 x 10/100). Therefore, the amount awarded under the head of permanent disability is enhanced to Rs.28,800/-. The Tribunal has awarded Rs.5000/- towards loss of amenities which we enhance to Rs.15,000/-. Thus, the appellant is entitled to an amount of Rs.41,600/- (Rupees fortyone thousand and six hundred Only) as additional compensation over and above the compensation awarded by the Tribunal. The said amount of Rs.41,600/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realization. The 3rd respondent Insurance Company shall deposit the amount within 30 days from the date of receipt of a copy of this judgment.

This appeal is allowed in part as above.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P. JOSEPH.
JUDGE**

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PA TO JUDGE

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