

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

MACA.No. 380 of 2006

AGAINST THE AWARD IN OPMV 388/2001 of MACT, KALPETTA
DATED 07-08-2003

APPELLANT(S)/APPELLANT(PETITIONER):

ANIL, AGED 19 YEARS, S/O.MANIKKAN,
MANALKADU, POST NEERVARAM, MANATHAVADY TALUK,
WAYANAD DISTRICT. (DIED)

ADDITIONAL APPELLANTS:

2. JAYALAKSMI, AGED 25 YEARS,
MANALKADU, POST NEERVARAM, MANATHAVADY TALUK,
WAYANAD DISTRICT.
3. ADARSH, MINOR AGED 6 YEARS, BY MOTHER AND NEXT
FRIEND JAYALAKSMI, AGED 25 YEARS, MANALKADU, POST
NEERVARAM, MANATHAVADY TALUK,
WAYANAD DISTRICT.
4. ARJUN, MINOR AGED 3 YEARS, BY MOTHER AND NEXT
FRIEND JAYALAKSMI, AGED 25 YEARS, MANALKADU, POST
NEERVARAM, MANATHAVADY TALUK,
WAYANAD DISTRICT.
5. KAMALA, AGED 56 YEARS, MANALKADU, POST NEERVARAM,
MANATHAVADY TALUK,
WAYANAD DISTRICT.

ADDITIONAL APPELLANTS 2 TO 5 ARE IMPEADED AS PER
ORDER DATED 20/10/2015 IN I.A.NO.3260/2015.

BY ADV. SRI.N.J.ANTONY

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RESPONDENT (S) /RESPONDENTS:

1. K.A.KURIAN, AGED 48 YEARS,
S/O.AUGUSTY, KOLLAPPALLY HOUSE, KULIRMOOTTIL,
KODARANHI, KOZHIKODE DISTRICT.
(DRIVER CUM OWNER OF JEEP NO.KL-11J/3546) .

2. NATIONAL INSURANCE COMPANY, KALPETTA.
(LOCAL BRANCH OF THE INSURERS MANJERI BRANCH)

R1 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER

R2 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 20-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No.380 of 2006

Dated this the 20th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

The grievance is mainly with regard to the insufficiency of the compensation awarded by the Tribunal in the respect of injuries sustained by the claimant/original appellant, who is no more, and, in turn, sought to be substituted by impleadment of the additional appellants 2 to 5, who are the legal heirs.

2. The sequence of events is as follows: The claimant, aged 19 years at the time of accident, was stated as a general worker with a monthly income of ₹3,000/-. On 26/5/2001, by about 10.30 a.m., when he was pedalling a bicycle, a jeep bearing Registration

No.KL-11-J/3546, owned and driven by the 1st respondent and insured by the 2nd respondent, dashed against him, causing serious injuries involving fracture to both bones of the left leg and such other injuries. This resulted in hospitalisation for nearly 46 days and after recovery, the loss was sought to be compensated by filing the claim petition before the Tribunal.

3. The 1st respondent did not choose to contest the matter and was set ex parte. The claim was resisted by the Insurance Company on general grounds.

4. The evidence adduced before the Tribunal consists of the oral version of the claimant as P.W.1 and the documents produced and marked as Exts.A1 to A11. After analysing the facts and figures, the Tribunal arrived at a finding that the accident was solely due to the negligence on the part of the 1st respondent and proceeded to fix the quantum of compensation accordingly. It was observed that no satisfactory evidence was adduced as to the alleged

employment or income, under which circumstance the Tribunal reckoned a notional figure of ₹2,500/- as the monthly income. Amounts were awarded under different heads, granting a total compensation of ₹34,825/- which was directed to be satisfied by the Insurance Company with interest at the rate of 9% per annum from the date of petition. This is stated as grossly inadequate and hence this appeal.

5. Heard the learned counsel for the additional appellants as well as the learned counsel appearing for the Insurance Company.

6. The details of the injuries sustained by the claimant have been discussed by the Tribunal in paragraph-8 of the award and elsewhere. There is no dispute with regard to the hospitalisation for an extent of 46 days. The Tribunal has awarded loss of earning for a period of 4 months. Considering the gravity of the injuries, we find that the claimant would not have been in a position to resume work for a period of six months and as such, we award a further compensation

of ₹5,000/- under this head. The total medical expense covered by Ext.A11 bills is stated as about ₹4,052/-. The Tribunal has awarded a total sum of ₹6,375/- towards the medical bills and also the expenses for the bystander. We find it fit and proper to grant an additional amount of ₹2,500/- towards bystander's expenses. It is seen that only a sum of ₹10,000/- has been awarded by the Tribunal towards pain and suffering. The nature of injuries, as discussed by the Tribunal and as referred to by this Court in the previous paragraph, would have made the claimant to suffer much pain and as such, we award a further sum of ₹15,000/- under this head. No evidence was adduced by the claimant as to the extent of disability, if any, and no document was produced as to the future treatment. No such course was pursued in the appeal as well availing the remedy Order 41 Rule 27 of the CPC. However, the Tribunal has granted a sum of ₹5,000/- towards the loss of earning power on a notional basis, which does not require any

interference. The fact remains that no compensation has been awarded by the Tribunal towards loss of amenities and enjoyment in life. It is true that the claimant/original appellant is no more; but he bid farewell to this world only on 13/7/2015, on committing suicide, which shows that he did not suffer a natural death. Even otherwise, he already sustained the loss of amenities and enjoyment in life at least for a period of 14 years from 26/5/2001 till the date of death, which requires to be compensated. We award a sum of ₹25,000/- under this head as well. The total balance compensation payable comes to ₹47,500/- (Rupees Forty seven thousand and five hundred only) which shall carry interest at the rate of 9% per annum from the date of the petition. However, it is seen that the appeal was preferred with a petition to condone the delay of '844' days. As such, interest needs to be satisfied by the Insurance Company, excluding the said period and the appellant will be entitled to get interest at the rate mentioned above, except for the

said period. Since the policy is admitted, the Insurance Company is directed to satisfy the due amount within a period of one month from the date of receipt of a copy of this judgment. It is for the additional appellants to approach the Tribunal for appropriate extent of appropriation among the beneficiaries. It is made clear that the entire amount can be disbursed to the additional appellants, based on the extent of appropriation among themselves and no amount does require to be kept in fixed deposit or otherwise.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge