

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

MACA.No. 470 of 2006 ()

AGAINST THE AWARD IN OPMV 1875/1999 of ADDL.MACT,THALASSERY
DATED 11-12-2003

APPELLANT/PETITIONER::

K. DINESHAN, S/O. BHASKARAN,
AGED 34 YEARS, KUDUVAN HOUSE, KAMBIL,
P.O. KOLACHERY, KANNUR DISTRICT.

BY ADVS.SMT.K.K.CHANDRALEKHA
SRI.GEORGE SEBASTIAN

RESPONDENT(S)/RESPONDENTS:

1. RAJESH. C., S/O. KRISHNAN,
CHATAYAN HOUSE, P.O.CHIRAKKAL, KANNUR DISTRICT.

2. GENERAL SECRETARY, KERALA VYAPARI
EKOPANA SAMITHI, PUTHIYATHERU UNIT, P.O. CHIRAKKAL,
KANNUR DISTRICT.

3. THE NEW INDIA ASSURANCE CO.LTD.,
BRANCH OFFICE, 963/2, 2ND FLOOR,
NEAR MUNICIPAL BUS STAND, KANNUR.

R3 BY ADV. SRI.P.G.GANAPPAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

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

M.A.C.A.No.470 of 2006

Dated this the 25th day of September, 2015.

JUDGMENT

Harilal, J.

The appellant is the claim petitioner in O.P(MV) No.1875/99 on the files of the Additional Motor Accidents Claims Tribunal, Thalassery. The above claim petition was filed under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries sustained in a road traffic accident. According to the appellant, on 9.5.1999 at 8.30 p.m. while he was travelling in an Ambulance having Registration No.KL-13/B-3983 from Kannur to Mangalore, the said vehicle overturned and as a result the appellant has sustained serious injuries. The accident was caused by the rash and negligent driving of the vehicle, by the 1st respondent. Immediately after the accident, he was taken to Unity Health Complex, Mangalore, for treatment and, thereafter, he

was treated in the Appolo Hospital, at Chennai. He claimed an amount of Rs.3 lakhs as compensation. According to the appellant, the Ambulance was owned by the 2nd respondent, driven by the 1st respondent and insured by the 3rd respondent and, therefore, they are jointly and severally liable to pay the compensation to him.

2. The respondents 1 and 2 were set ex parte. The 3rd respondent filed written statement admitting the policy coverage; but, disputing the age as well as the monthly income of the appellant. The 3rd respondent denied the allegation that the accident was occurred due to the rash and negligent driving of the vehicle by the 1st respondent.

3. The evidence consists of the oral testimony of P.W.1 and Exts.A1 to A13. No evidence, either oral or documentary, had been adduced by the contesting 3rd respondent. After considering the evidence on record, the Tribunal passed the impugned award, granting an amount of Rs.90,950/- with interest at the rate of 9%

per annum from the date of petition, till realisation. The inadequacy of the quantum of compensation determined by the Tribunal is under challenge in this appeal.

4. Heard the learned counsel for the appellant and the learned counsel appearing for the 3rd respondent.

5. The learned counsel for the appellant mainly contended that even though the appellant has produced a disability certificate, which would show that the appellant has disability at 9%, the Tribunal discarded the said certificate without any reasoning. It is also contended that the quantum of compensation fixed for pain and suffering, loss of amenities, transportation, etc., are very low and inadequate.

6. Per contra, the learned counsel appearing for the 3rd respondent advanced arguments to justify the quantum of compensation determined by the Tribunal. In view of the rival submissions made at the Bar, the point that arises for consideration is, whether the appellant is entitled to get enhancement in the

quantum of compensation determined under any of the heads.

7. Going by the impugned award, it is seen that the Tribunal has arrived at a finding that the accident was occurred due to the rash and negligent driving of the vehicle by the 1st respondent and thereby, the 3rd respondent is liable to indemnify the 2nd respondent, who is the owner of the vehicle. We do not find any reason to interfere with the said finding.

8. Ext.A2 shows that immediately after the accident, the injured was taken to the hospital at Mangalore and Ext.A9 series would reveal that thereafter, he was treated at the Appolo Hospital at Chennai. Ext.A10 train tickets and Ext.A11 (Series) trip sheets also show that he was taken to the Appolo Hospital at Chennai and treated there. But, the Tribunal has granted Rs.2,500/- only towards transportation expenses. We find that the said amount is inadequate and we grant an amount of Rs.10,000/- more towards the expense for transportation. Ext.A13

driving licence shows that as contended by the appellant he was an autorikshaw driver. The appellant was examined as P.W.1 and he has given oral evidence to the effect that he is getting Rs.100/- per day. Considering the money value and other relevant aspects prevailing at the time of accident, the monthly income fixed as Rs.1,800/- is inadequate and the same will stand enhanced to Rs.2,500/-. Considering the grievous nature of the injuries and the period required for recuperation, we further find that three months taken for reckoning the loss of earnings is not sufficient and the same is enhanced to six months. Thus, for the loss of earnings, the appellant is entitled to get Rs.15,000/- and the balance payable under this head is Rs.9,600/-. The Medical Board constituted at the District Hospital, Kannur had assessed the permanent disability at 9%. On re-working the compensation for permanent disability with monthly income at Rs.2,500/-, the appellant is entitled to get a total compensation of Rs.45,900/-

(2500 x 12 x 17 x 9/100). Considering the grievous nature of the injuries shown in Ext.A3 discharge summary and the resultant pain suffered by him as an inpatient and thereafter till recuperation, we find that the amount of Rs.12,000/- granted for pain and suffering is also inadequate and the same will stand enhanced to Rs.20,000/- and the balance payable under this head is Rs.8,000/-. Considering the difficulties, discomforts and other inconveniences caused to the appellant by the severity of the injuries, we find that Rs.5,000/- granted for loss of amenities is also not sufficient and the same will stand enhanced to Rs.20,000/- and the balance payable under this head is Rs.15,000/-.

9. Thus, the appellant is entitled to get an additional compensation of Rs.88,500/- (Rupees Eighty eight thousand and five hundred only) and the 3rd respondent is liable to pay the same. It is made clear that the appellant is entitled to get interest at the rate of 9% per annum for the enhanced compensation.

The 3rd respondent is directed to deposit the entire compensation within one month from the date of receipt of a copy of this judgment.

Appeal is disposed of accordingly.

Sd/—

P.R. RAMACHANDRA MENON, JUDGE

Sd/—

K. HARILAL, JUDGE

okb.