

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 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 792 of 2005 ()

AGAINST THE AWARD IN OPMV 1948/2000 of M.A.C.T.,KOTTAYAM DATED
18-03-2004

APPELLANT(S) /PETITIONER:

SAJANMON, S/O.M.C.JOHN,
VAYASKARA CHIRAYIL HOUSE, KARAPUZHA KARA, KOTTAYAM.

BY ADVS.SRI.ESM.KABEER
SMT.K.M.AMINA BEEVI

RESPONDENT(S) /RESPONDENTS:

1. VITTAL RAO, S/O.SHAN RAO,
DOOR NO. 49, MAGADI ROAD, RAJAJI NAGAR,
BANGALORE-23, KARNATAKA STATE.

2. SURESH CHANDRA, S/O.VENKITARAMA REDDY,
DOOR NO.117, 3RD MAIN BLOCK, RAJAJI NAGAR,
BANGALORE-10, KARNATAKA STATE.

3. THE NEW INDIA ASSURANCE CO.LTD.,
ESWARI COMPLEX, RAJKUMAR ROAD, PRAKASH NAGAR,
BANGALORE.

R2 BY ADV. SRI.T.SETHUMADHAVAN
R2 BY ADV. SRI.K.JAYESH MOHANKUMAR
R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.792 of 2005

Dated this the 1st day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

Fixation of negligence, apportioning the responsibility in the ratio of 50:50 between the appellant/rider of the motor cycle and the driver of the car, which was coming in the opposite direction and collided against the motor cycle, and the inadequacy of the compensation, particularly, reckoning only a nominal amount of Rs.1,750/- as the monthly income of the appellant, made the appellant to feel aggrieved and approach this Court by filing the appeal against the award passed by the Tribunal.

2. The sequence of events narrated in the appeal shows that the appellant was riding a motor cycle, bearing No.KL-5/G-7061, on 16.5.1999. While so, a car, bearing No.KA-2/6988, driven by the 1st respondent, owned by the 2nd respondent and insured with the 3rd

respondent, came from the opposite direction and collided against the motor cycle causing serious injuries to both the riders, (the appellant herein who was riding the vehicle and also the pillion) leading to two separate claim petitions before the Tribunal. The claim preferred by the appellant herein was to the extent of Rs.2,69,900/-. The first and second respondents chose to remain ex parte. The third respondent insurer alone chose to contest the matter on all grounds. The evidence adduced before the Tribunal consists of the oral version of P.W.1 (appellant herein) and P.W.2, besides the exhibits marked as A1 to A5, A6(a), A6(b) and A7 to A12. The documents produced from the part of the respondents were Exts.B1 and B2. After meticulous analysis of the facts and figures, the Tribunal arrived at a finding, based on police records including the mahazar and the charge sheet that both the rider of the motor cycle/appellant and the driver of the car were equally responsible for the accident. It was also observed that, at the time of the accident, the appellant had

encroached into the other side of the road by crossing the middle line and still, it was found that adequate care and caution was not exercised by the driver of the car; thus, fixing the liability in the ratio of 50:50.

3. The claim of the appellant was that he was employed as an Accountant in a private establishment. The alleged salary of Rs.5,000/- per month was sought to be established with reference to Ext.A9 certificate issued by the employer. Observing that the employment certificate revealed the alleged employment as having obtained just a few months back; that the same was not a permanent one; that no documents were produced so as to establish the qualification and the fact that the claimant had produced a certificate of the year 2004 as to his employment in a rice mill with a monthly income of Rs.3,000/- (which was also not substantiated by adequate proof) a notional figure of Rs.1,750/- was reckoned as the monthly income.

4. The appellant claimed permanent disability to an extent of 14% as certified by a private Doctor, who

had issued Ext.A8 certificate. As the matter of fact, the treatment was availed from the concerned Medical College and, as such, it was noted that the Doctor was not examined and no certificate was issued or obtained from the concerned Medical College. In the said circumstance, considering the nature and extent of injuries suffered and also the adverse circumstances resulted, the Tribunal reckoned an extent of '8%' as the permanent disability and worked out the compensation, reckoning the multiplier of '18', considering the age factor as 27 years. Thus, a total compensation of Rs.91,400/- was awarded, and applying the ratio as to the fixation of negligence, 50% was ordered to be satisfied by the Insurance Company, which made the appellant to approach this Court by filing the appeal challenging the fixation of negligence and also as to the quantum awarded under various heads.

5. Heard the learned counsel for the appellant at length.

6. During the course of hearing, the learned counsel for the appellant submitted that the finding

with regard to the fixation of negligence is wrong and perverse for the fact that reliance has been placed solely on the contents of the mahazar. It is pointed out that the appellant has been acquitted in the criminal case registered against him as evident from Ext.A4 judgment dated 23.12.2000 in C.C.No.704/99 of the concerned Magistrate's court. With equal vehemence it is pointed out that since the appellant had filed a protest complaint against the driver of the car, i.e., the 2nd respondent, leading to registration of C.C.No.45/2001, wherein the accused/2nd respondent pleaded guilty as evident from Ext.A3 dated 19.11.2001. This being the position, the entire liability ought to have been mulcted upon the shoulders of the 2nd respondent/driver of the car and, as such, the Tribunal went wrong in fixing the negligence in an equal manner.

7. It is seen from the award that the Tribunal has discussed the facts and figures very meticulously with reference to the materials available on record, as evident from paragraphs 7 and 8 of the award. It is

true that the mahazar was prepared on 17.5.1999, i.e., on the next day of the accident occurred in the afternoon on 16.5.1999. This cannot be said as belated, in any manner, so as to extend any advantage to the appellant herein. Equally relevant is to note that Ext.A3 is solely in respect of the negligence attributed on the part of the driver of the car and the police had filed charge sheet against both the drivers, i.e., the driver of the car as well as the appellant herein who was riding the motor cycle. Merely for the reason that the driver of the car had admitted his part of negligence leading to Ext.A3, it cannot be said or conceived that the appellant herein should stand exonerated in all respects with regard to the negligence on his part. It is true that the appellant was acquitted as per Ext.A4 verdict passed by the concerned trial court. But the said finding is for the reason that the prosecution had failed to establish the offence beyond reasonable doubt. The nature and adequacy of evidence in a proceeding under the M.V. Act very much differ and the rigor of evidence as contemplated under the criminal

jurisprudence is not intended in a proceeding to be pursued before the Motor Accidents Claims Tribunal with regard to payment of compensation. It is after detailed discussion, also with reference to the police records including scene mahazar, that the finding was arrived at by the Tribunal, fixing the negligence in an equal manner. This being the position, this Court does not find any reason to vary the said finding. The point stands answered against the appellant.

8. Coming to the quantum of compensation payable, the learned counsel for the appellant submits that the appellant was a B.Com. graduate having a Diploma in computer (PGDCA). As noted by the Tribunal, no document was produced before the Tribunal as to the qualification possessed. It is also a fact that the appellant had produced Ext.A9 salary certificate, apart from producing a subsequent salary certificate of the year 2004 with regard to the employment in a rice mill, obtaining a monthly income of Rs.3,000/-. Considering the facts and circumstances and also the money value as on the date of accident

occurred on 16.5.1999, we find it fit and proper to enhance the monthly income reckoned by the Tribunal from Rs.1,750/- to Rs.2,500/-. This Court finds that no other modification is required in any manner, that is, with regard to fixation of negligence, or with regard to the extent of disability reckoned by the Tribunal, for want of sufficient proof, reckoning the same only as 8% in place of 14% as given in Ext.A8 Medical Certificate issued by a private doctor. On re-working the compensation payable as above, the loss of earning requires to be varied for the period of six months comes to Rs.15,000/-. After giving credit to a sum of Rs.10,500/- awarded by the Tribunal the balance comes to Rs.4,500/- in this head. The loss due to permanent disability is worked out as $2500 \times 8 \times 12 \times 18/100 = 43,200$. After setting off the sum of Rs.30,240/- awarded by the Tribunal, the balance comes to Rs.12,960/-. We find that the appellant was hospitalised for a period of '51 days' undergoing treatment as I.P., suffering from the injuries involving open knee injury, fracture of supra condylar right

femur and injuries of such other in nature. We find that the amount of Rs.15,000/- awarded by the Tribunal towards pain and suffering is inadequate and we enhance the same by a further sum of Rs.10,000/-. Similarly, in the case of loss of amenities, the Tribunal has awarded only a sum of Rs.10,000/-. We award a further sum of Rs.15,000/- considering the extent of treatment and hospitalisation and the continuing state of affairs. Despite the hospitalisation for 51 days, only a sum of Rs.2,000/- has been awarded by the Tribunal towards bystanders' expenses. We award a further sum of Rs.3,000/- under this head as well. Thus, the total compensation payable will come to Rs.45,460/- (Rupees Forty five thousand four hundred and sixty only). In view of the fixation of negligence at 50:50, this Court finds that the appellant is entitled to have only 50% of the total enhanced compensation and, as such, we award Rs.22,730/- (Rupees Twenty two thousand seven hundred and thirty only). Since the policy stands admitted, we direct the Insurance Company to deposit

the said amount with interest @ 9% per annum from the date of filing the claim petition before the Tribunal, till date of deposit, within a period of one month from the date of receipt of a copy of the judgment.

The appeal stands disposed of as above.

P.R. RAMACHANDRA MENON, JUDGE

K. HARILAL, JUDGE

okb.