IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

MACA.No. 341 of 2012 ()

AGAINST THE AWARD IN OPMV 1527/2008 of IST ADDL.M.A.C.T, KOZHIKODE
DATED 30-09-2011

APPELLANT(S)/APPELLANT/PETITIONER:

SHAJIR.P.K
S/O.HAMEED, AGED 26 YEARS, POTTANKANDY HOUSE
P.O.NANMINDA, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S):

1. SHANAVAS.P.K
S/O.HAMEED, POTTANKANDIYIL HOUSE, P.O.NANMINDA
KOZHIKODE, PIN-673613.

2. SIRAJUDHEEN K., S/O.ABDUL MAJEED,
POOVANKANDI HOUSE, POONUR, UNNIKULAM
KOZHIKODE, PIN-673574.

3. ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LTD.,
D1, II FLOOR, AMRITHA TOWERS
KPCC JN., OPP. MAHARAJA GROUNDS, M.G.ROAD
KOCHI-682016.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A. No. 341 of 2012

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Dated, this the 27th day of November, 2015

<u>JUDGMENT</u>

<u>Ramachandra Menon, J.</u>

Inadequacy of the compensation awarded by the Tribunal in respect of the injuries sustained by the appellant is the subject matter of challenge in this appeal.

2. The accident was occurred on 17.01.2008. The appellant along with one Shameer was travelling in a jeep bearing registration No. **KL 57 9587** owned, driven and insured by the respondents 1 to 3 respectively. While proceeding from Kozhikkode to Mysore, the vehicle hit against a bullock cart causing injuries to the appellant as well as to the aforesaid Shameer, which was sought to be compensated by filing separate claim petitions. It is brought on record that both of them were employees in the establishment by name 'Haritha Vegetables', Kozhikkode and they were proceeding to procure vegetables, on behalf of their employer.

3. The first and second respondents did not contest the matter and were set ex-parte.

4. The evidence adduced before the Tribunal consists of Exts.A1 to A11 documents, Exts. C1 and C2 disability certificates and Ext. B1 copy of policy. As far as the appellant is concerned, the disability was got certified, vide Ext. C2, to an extent of 50%. But the Tribunal has reckoned only 35% of the disability. Though the appellant contended that he was having a monthly income of Rs.9,500/- p.m., the Tribunal reckoned only a notional income of Rs.3,000/- p.m. and granted a compensation of Rs.2,14,200/- under the head 'permanent disability'. A total compensation of Rs.6,70,363/- was granted by the Tribunal, which was directed to be satisfied with interest @ 7.5% p.a. from the date of petition, till realization. The grievance of the appellant is mainly that the notional income fixed by the Tribunal @ Rs.3,000/- p.m. is abysmally on the lower side. It is also contended that there is no tenable ground to have reduced the extent of disability from 50% to 35% and this has resulted miscarriage of justice.

3. Heard the learned senior counsel appearing for the respondent Insurance Company.

4. On going through the pleadings and proceedings, it is seen that the appellant did not adduce any evidence to substantiate

his income. But the fact remains that the accident was in the year 2008. Considering the economic conditions and the money value prevailing as on that date, and further that the appellant was an able bodied youth of 23 years, we find it fit and proper to re-fix the monthly income as Rs.4,000/-. Similarly, when the extent of disability certified by the Medical Board consisting of experts in different fields, certifying the same as 50%, the reduction effected by the Tribunal reckoning the same as 35% does not appear to be correct. It is true that the Tribunal is not bound to follow the disability certified in an automatic manner or by virtue of a mechanical exercise, as made clear by the Apex Court in **Raj Kumar Vs. Ajay Kumar [2011 (1) KLT 620 (SC)]**, but reasons have to be explained, to scale down the extent of disability, which absolutely not seen done in the instant case.

7. The injuries sustained by the appellant and period of hospitalization under different spells, as disclosed from paragraph 13 of the Award, are as follows :

> "13. .... He sustained severe head injury with multiple intra cerebral contusion with diffuse axonal injury, multiple bilateral lung contusion with right side rib fracture with right hemopneumothorax.

> He was admitted in Appollo BGS hospital on 17.01.2008 and discharged on 28.01.2008. The petitioner was admitted in MIMS hospital on 29.01.2008 and discharged on 26.02.2008. Again he was admitted on 28.03.2008 and discharged on 31.03.2008. Subsequently, he was admitted on 15.06.2008 and discharged 23.06.2008. So in total he was hospitalized for 52 days..............."

The adverse circumstances resulted because of the accident, involving 52 days' of hospitalization, has also to be taken note of while fixing the compensation under the head 'loss of earning' and 'permanent disability'. The multiplier adopted by the Tribunal as '17' does not require any interference. On reworking the compensation under the head of 'permanent disability', reckoning 50% of the disability, as certified by the competent authority, it will come to Rs. 4,08,000/- [4000 x 12 x 17 x 50/100]. After giving credit to Rs.2,14,200/- already granted by the Tribunal, the balance compensation payable under the head of permanent disability will come to **Rs.1,93,800/-**. Similarly, towards the loss of earning, the balance compensation payable will come to **Rs.6000/-** [(6x 4000) - (6 x 3000)]. Despite serious injuries as mentioned above, only a sum of Rs.5000/- has been awarded by the Tribunal towards loss of amenities, we find it fit and proper to grant a sum of **Rs.20,000/-** more under this head. So also in respect of pain and sufferings, only a sum of Rs.15000/- has been awarded. We find it fit and proper to grant a further sum of **Rs.10,000/-** under this head as well. The balance/additional compensation to be paid to the appellant will come to **Rs.2,29,800/- [Rupees Two lakhs Twenty nine thousand and Eight hundred only],** which shall be satisfied with interest @ 9% p.a. from the date of petition, till realization. Since the policy stands admitted, the entire compensation amount with interest shall be deposited by the Insurance Company, at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment.

Appeal stands allowed to the said extent. No cost.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K. NARENDRAN,
JUDGE

kmd /True copy/

P.A. to Judge