

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

MACA.No. 860 of 2005 (B)

AGAINST THE AWARD IN OPMV 29/2001 of M.A.C.T.,KOTTAYAM
DATED 07-06-2004

APPELLANT/PETITIONER:

RAJAPPAN, SON OF MADHAVAN, PALAL PARAMBIL,
INDIRA JUNCTION, ARUNOOTTIMANGALAM.

BY ADV. SRI.T.R.HARIKUMAR

RESPONDENTS/RESPONDENTS:

1. ANANDARAJ, KARIYATTU HOUSE,
ALAPPATTU EXTENSION ROAD, ERNAKULAM.

2. SIBY MATHEW, S/O.MATHEW
KUZHIOMBIL, ELANJI, KOTTAYAM DISTRICT.

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
POONAMPEEMBRI BRANCH.

R3 BY ADV. SRI . ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

M. A. C. A. No.860 of 2005

Dated this the 18th day of September, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant sustained serious injuries in a motor accident that occurred on 30-06-2000 involving a scooter by which he was travelling and a car driven by the second respondent, owned by the first respondent and insured with the third respondent. The appellant preferred a petition before the Motor Accidents Claims Tribunal, Kottayam, 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 rash and negligent driving of the car by the second respondent and awarded a total compensation of ₹88,700/- under various heads as follows:

Loss of earnings	-	₹12,500/-
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Expenses for bystanders	-	₹ 7,000/-
Extra nourishment	-	₹ 2,000/-
Medical bills	-	₹ 3,700/-
Expenses for transport	-	₹ 1,000/-
Pain and suffering	-	₹15,000/-
Injuries	-	₹15,000/-
Disability	-	₹25,000/-
Loss of enjoyment in life	-	₹ 7,500/-
Total	-	----- ₹88,700/- =====

The third 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 third respondent. Notice to the first respondent was dispensed with. The second respondent remains absent despite serving notice on him.

3. The appellant sustained the following injuries in the

accident:

- 1) Segmental fracture of left radius.
- 2) Segmental comminuted fracture of right femur.
- 3) Fracture pelvis with fracture dislocation of right acetabulum.
- 4) Multiple abrasions on both the hands and forehead.

4. The appellant was taken to Mercy Hospital, Thalayolaparambu, after the accident. He was taken to the Medical College Hospital, Kottayam, on 30-06-2000 itself and admitted there. He was discharged on 21-08-2000. He was treated by open reduction and internal fixation for the left radius with I.M. Nail and right femur with plate and screw. He was again admitted to that Hospital on 07-09-2002 for removal of implants. He was discharged on 26-09-2002 after removal of implants and excision of lower end of ulna.

5. The appellant was aged 47 at the time of accident. He was working as a Foreman with Rangoli Fashions,

Cherthala, during the period of accident. In order to prove that fact, the appellant has produced Ext.A9 certificate issued by the proprietor of Rangoli Fashions. But, the learned Tribunal has not accepted the certificate for the reason that it was not properly proved. The income which was being earned by the appellant is certified in Ext.A9 as ₹5,000/- per month. We do not find any reason to disbelieve Ext.A9 showing the occupation of the appellant during the period of accident. But, in the absence of cogent evidence, we are unable to accept the monthly income certified in it. Therefore, based on probabilities, we fix the monthly income of the appellant at ₹4,000/- for the purpose of calculating and awarding compensation.

6. The appellant has produced Ext.A8 Medical Certificate dated 01-07-2003 issued by Dr.P.Asokan, Assistant Professor of Orthopaedics, Medical College, Kottayam, in which it is certified that the appellant has a permanent physical disability of 27%. The injuries suffered by the appellant, the treatments given to him and the

disabilities being experienced by him are narrated in so many words in Ext.A8. On considering various disabilities being experienced by the appellant, the doctor has certified in Ext.A8 that the appellant has a permanent physical disability of 27%. The permanent disability so certified in Ext.A8 has not been accepted by the Tribunal and the Tribunal awarded ₹25,000/- towards disability on a rough estimate. We have had the advantage of seeing the appellant in the Court today. We have seen his physical condition. We have interacted with him. In the light of various disabilities being experienced by the appellant with his left hand, right knee, right hip and others, we are of the considered view that the non-examination of Dr.P.Asokan who has issued Ext.A8 is not a ground for rejecting the permanent disability certified in it. Moreover, the appellant has produced an additional document which we have marked as Ext.A13. This document, certifying the permanent disability of the appellant, was issued by the Medical Board constituted by the District Medical Officer, Kottayam. In

Ext.A13, it is certified that the appellant has a permanent locomotor disability of 40%. The reasons for the disabilities are also narrated in this document. In the light of these documents and the facts we have observed by seeing and hearing the appellant, we have no hesitation in accepting the permanent disability certified by Dr.P.Asokan in Ext.A8. The permanent disability certified in Ext.A13 is only with regard to locomotor functions. Ext.A8 certifies the permanent physical disability as a whole being experienced by the appellant. On considering both these documents, we accept that the appellant has a permanent physical disability of 27%. In view of the foregoing facts, we fix the loss of earning power of the appellant at 40% for the purpose of calculating and awarding compensation.

7. The Tribunal has awarded ₹12,500/- towards loss of earnings for a period of 5 months. This is based on the finding that the appellant was earning ₹2,500/- per month. We have already found that the appellant was earning ₹4,000/- a month during the relevant period. Moreover, on

considering the serious nature of fractures suffered by the appellant and the long period of treatments, we are of the view that the appellant is entitled to compensation for loss of earnings at least for a period of seven months. Therefore, the appellant is entitled to ₹28,000/- towards loss of earnings in the place of ₹12,500/- awarded by the Tribunal. The Tribunal has awarded ₹1,000/- towards transport to hospital. This we enhance to ₹2,000/-. On considering the serious nature of injuries suffered and the surgical procedures undergone as also the long period of treatments, we enhance ₹15,000/- awarded under the head of pain and suffering to ₹25,000/-.

8. The appellant was aged 47 at the time of accident and hence the appropriate multiplier to be adopted in his case is 13. When the compensation for loss of earning power is calculated applying the said multiplier which works out at ₹2,49,600/- ($₹4,000/- \times 12 \times 13 \times 40/100$). (Rupees two lakh fortynine thousand and six hundred only). We allow the same in the place of ₹25,000/- awarded by the Tribunal. The

Tribunal awarded ₹15,000/- towards compensation for injuries. It also awarded ₹7,500/- towards loss of enjoyment in life. Since compensation cannot be awarded under a separate head of injuries, we take the amounts awarded under both these heads as given under the head of loss of amenities and enjoyment of life. On considering the serious nature of the disabilities being experienced by the appellant and the consequential loss of amenities being experienced by him, we enhance the amount under this head to ₹40,000/-. We find no reason to interfere with the amounts awarded by the Tribunal under other heads.

9. Thus, the appellant is entitled to an additional compensation of ₹2,68,600/- (Rupees two lakh sixtyeight thousand and six hundred only) over and above the compensation already awarded by the Tribunal. The said amount of ₹2,68,600/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The third respondent Insurance Company shall deposit the amount within thirty days from the date of

receipt of a copy of this judgment. On deposit of the above amount, the Tribunal shall permit the appellant to withdraw half of the amount so deposited. The rest of the amount shall be deposited in Fixed Deposit for a period of two years in the name of the appellant following the directions issued in that regard.

This appeal is allowed in part as above. No costs.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

