

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

MACA.No. 871 of 2005 ()

(AGAINST THE AWARD IN OPMV 578/2000 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 26.11.2004)

APPELLANT(S)/APPELLANT/PETITIONER:

SIBI @ STUVERT, S/O.SAMUEL,
PUTHENVEETIL, BEACH WARD, BEACH POST OFFICE
ALLEPPEY.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT(S)/RESPONDENTS:

* 1. T.V.KUTTOOSA, S/O.KOYA ALI,
M/S.KARNATAKA TRADING COMPANY, VIRAJPET, SOUTH KODAGU
KARNATAKA STATE-571 218.
(*DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 14.07.2015
IN I.A.No.2420 OF 2011)

** 2. MOHAMMED ALI, S/O.SHAHUL HAMEED,
PUTHENPURA HOUSE, KALUVUMMA DESOM, R.G.VILLAGE
VIRAJPET, KARNATAKA STATE.

(*DELETED FROM THE PARTY ARRAY AS PER
ORDER DATED 31.08.2011 IN I.A.No.2388 of 2011)

3. THE ORIENTAL INSURANCE CO LTD.,
BADSHA BUILDING, OPP: CLOCK TOWER, VIRAJPET-571218.

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

R3 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

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M.A.C.A.No.871 OF 2005
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Dated this the 14th July, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Inadequacy of compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a road traffic accident on 12.08.1999 is under challenge in this appeal.

2. When the appellant was travelling in a mini lorry bearing No.KL.7G.9495, another lorry(owned by the first respondent and driven by the second respondent) coming from the opposite direction, hit against the mini lorry, causing serious injuries leading to the claim petition. It was specifically alleged that the accident was only because of the negligence on the part of the driver of the lorry bearing No.KA.12/4959, which was accepted by the Tribunal and a finding was rendered in this regard . The policy stands admitted . The owner and driver did not turn up to contest the matter. After culmination of the evidence, the Tribunal awarded a total sum of Rs.62980/- under various

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heads, as given below:

1. Loss of earning	:	Rs.8000
2. Medical expenses	:	Rs.8500
3. Bystander expense	:	Rs.12000
4. Pain and suffering	:	Rs.10000
5. Permanent disability	:	Rs.24480

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Total	:	Rs.62980
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The above amount was ordered to be satisfied by the Insurance Company with interest at the rate of 6% per annum . However, in view of violation of policy/statutory conditions, in so far as the driver was not having valid driving licence , the Insurance Company was permitted to recover the said amount from the owner of the vehicle.

3. During the course of hearing, it is brought to the notice of this Court, that exactly under similar circumstances involving injuries sustained to another passenger of the same vehicle , the matter was considered by another Bench of this Court in M.A.C.A

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No.970 of 2005 and compensation was enhanced to the extent as specified therein , directing the Insurance Company to satisfy the same with interest at the rate of **9%** for the enhanced amount from the date of the petition, with liberty to recover the same from the owner of the vehicle.

4. Injuries sustained by the appellant herein are the following:

*"Communited fracture femur (right)
fracture patella, loss of two teeth,
contusion (right) asnd shoulder bodily
injuries"*

According to the appellant, the permanent disability certified by the Asst. Professor of Orthopaedics, Medical College Hospital, Thrissur was to an extent of 12%, whereas the Tribunal reckoned only 6% as the permanent disability so as to calculate the compensation payable in respect of the permanent disability.

5. After hearing, this Court finds that some variation is required to be made with regard to the quantum of compensation. Considering the nature of contention as to the

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avocation of the injured as a commercial artist, though no documentary evidence is produced in respect of the claimed income of Rs.5000/- per month, we fix it as Rs.2500/- p.m. as effected by another bench of this Court in MACA.970 of 2005. Considering the extent of injuries, we find that, reckoning 10% disability will be proper to work out the figures . Accordingly, we modify and grant additional amounts under different Heads in the following manner:

Head	Amount ordered by the Tribunal (Rs.)	Amount enhanced by this Court over and above the amount awarded by the Tribunal (Rs.)
Loss of earning	8000	4000
Medical expenses	8500	2500
Pain and suffering	12000	10000
Loss of amenities	10000	10000
Peramanent disability	24480	[2500 x 12 x10/100 x 17]= 51000-24480 = 26520
Total enhanced amount		Rs. 53020/-

The said enhanced amount will carry interest @ 9% p.a. from the date of the petition till payment. The insurance Company is directed to effect the payment at the earliest, at any rate, within one month from the date of receipt of a copy of the judgment.

6. It is made clear that once the payment is effected, it is open for the insurance company to have it recovered from the insurer/owner of the vehicle, in view of proven violation of policy /statutory conditions.

Appeal is disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE.**

**BABU MATHEW P. JOSEPH,
JUDGE.**