

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 462 of 2012 ()

AGAINST THE AWARD IN OPMV 289/2007 of MACT VADAKARA DATED 24.07.2009

APPELLANT/PETITIONER:

T.K.RAGHAVAN
S/.NARYANAN, AGED 46 YEARS
RESIDING AT 'NANDANAM' NEAR RURAL S.P.OFFICE
PUDUPPANAM P.O., PIN-673 105, PUDUPPANAM
AMSOM DESOM, VADAKARA TALUK.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR

RESPONDENT(S)/RESPONDENTS:

1. MAMMED.T.V
S/O.ABDULLA, AGE NOT KNOWN
RESIDING AT TAIVALAPPIL HOUSE, MELADY P.O., PIN673 522
KOYILANDY TALUK. (OWNER OF THE MOTOR
CYCLE NO.KL.18A A 4481).
2. NIDHIN.E.
S/O.RAVINDRANATH, AGED 21 YEARS
RESIDING AT EDAPALLY HOUSE, IRINGAL P.O., PIN-673 522
KOYILANDY TALUK
(DRIVER OF MOTOR CYCLE NO.KL 18A 4481
DL.NO.2734/DB/85).
3. NATIONAL INSURANCE CO.LTD.
BRANCH OFFICER, NARANGAPURAM P.O., THALASSRY-1
PIN670 101, (INSURER OF MOTOR CYCLE NO.KL 18A 4481
POLICY NO.671102/31/05/6200015632
VALID FROM 1/2/2006 TO 31/1/2007).

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

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.462 of 2012

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Dated this the 22nd day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(MV).No.289 of 2007 on the file of the Motor Accidents Claims Tribunal, Vadakara. By award passed on 24.07.2009, the Motor Accidents Claims Tribunal awarded the sum of ₹68,320/- as compensation to the claimant as against his claim for ₹3,00,000/- as compensation for the injuries sustained by him in a motor accident and directed the third respondent insurer to deposit the said amount together with interest at 7.5% from the date of petition till the date of deposit as also costs quantified at ₹750/-. The claimant has, dissatisfied with the compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

2. The records disclose that the claimant had suffered fracture of both bones of left leg as also fracture of one rib on the right side. As a result of the fracture, he had undergone surgery for pneumothorax. He had also undergone treatment as an in-patient at Baby Memorial Hospital, Kozhikode during the period from 17.10.2006 to 24.10.2006 and later from 8.10.2008 to 10.10.2008 for implant removal. The Motor Accidents Claims Tribunal however awarded only

the sum of ₹20,000/- for pain and suffering, the sum of ₹5,000/- toward loss of amenities, the sum of ₹20,000/- towards loss of income, the sum of ₹5,000/- towards transportation charges, ₹2,200/- towards hospitalisation expenses and ₹1,350/- towards expenses for follow up treatment and ₹12,370/- towards medical expenses in all aggregating to ₹68,320/-.

3. The appellant is the managing partner of partnership firm and was running two textile shops. Though he had produced the income tax returns of his firm he has not been able to prove that as a result of injuries and his hospitalisation the business of the firms suffered loss or that there was diminution in his income. The Tribunal has, notwithstanding that fact awarded a consolidated sum of ₹20,000/- towards loss of income. In the light of the fact that the business establishment was not closed down and it continued to run despite the injuries suffered by the appellant, and as the appellant has not been able to prove that there was diminution in his income, we are not persuaded to hold that he is entitled to be awarded any amount as compensation under the head loss of income over and above the compensation awarded by the Tribunal.

4. We however notice that the Tribunal has awarded only the sum of ₹5,000/- as compensation for loss of amenities. As stated

earlier, in the accident both bones of his left leg were fractured. One rib was also fractured. With the result, he had to undergo surgery for pneumothorax and also for internal fixation. The implant in the leg was removed more than a year later. Having regard to the nature of the injuries we are of the opinion that on a modest estimate, the Tribunal ought to have awarded the sum of ₹25,000/- as compensation under the head loss of amenities. We accordingly award an additional compensation of ₹20,000/- under the head loss of amenities. The Tribunal has likewise awarded only the sum of ₹20,000/- as compensation for pain and suffering. Having regard to the nature of injuries and the fact that the claimant had undergone surgery twice and was hospitalised on two occasions, we are of the opinion that on a modest estimate the sum of ₹30,000/- atleast should have been awarded under the head pain and suffering. We accordingly award an additional compensation of ₹10,000/- under the head pain and suffering. The compensation awarded under other heads does not in our opinion merit any enhancement.

We accordingly award an additional sum of ₹30,000/- as compensation to the claimant over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the said amount with interest at 9% per annum

from the date of petition till the date of deposit, after excluding the period of 755 days covered by the order passed by this court on 7.2.2012 allowing the application to condone the delay in filing the appeal. Upon such deposit being made, the amount deposited shall be released to the appellant. No costs.

sd/-

**P.N.RAVINDRAN
JUDGE**

sd/-

**ANU SIVARAMAN
JUDGE**

kp/-

True copy

P.A.To Judge