IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

MACA.No. 477 of 2012 ()

(AGAINST THE AWARD IN OPMV 288/2009 of D.C. & SESIONS & MACT,KALPETTA DATED 08-12-2011)

APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE CO.LTD.
KALPETTA, REP.BY THE MANAGER, KOCHI REGIONAL OFFICE
M.G.ROAD, ERNAKULAM, COCHIN-35.

BY ADV. SRI.E.M.JOSEPH

RESPONDENTS/CLAIMANT AND RESPONDENTS 1 & 2:
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1. VIJU A.K. @ BIJU
AGED 32, S/O.KURIAKOSE, ALIYATTUKUDY HOUSE
VEMOM POST, MANANTHAVADY TALUK.

2. PAVITHRAN
AGED 55, S/O.RAMAN, PAVITHRAM HOUSE
CHANGATTUKADAVU, PAYODE, MANANTHAVADY TALUK.

3. HANSA
W/O.PAVTHRAN.K.V., PAVITHRAM HOUSE, EDAVAKA
NALLOOMADU POST, MANANTHAVADY TALUK.

R1 BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)
R2 & 3 BY ADV. SMT.CELINE JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 12-10-2015, ALONG WITH MACA 982 OF 2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.Nos. 477 & 982 OF 2012

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Dated this the 12th October, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

These two appeals arise from the Award passed by the M.A.C.T., Kalpetta in O.P.(MV)No.288 of 2009. The first one is preferred by the Insurance Company challenging fixation of quantum and negligence, whereas the other one is preferred by the claimant seeking for enhanced compensation.

2. The accident occurred on 20.03.2009, when the injured, aged 32 years, while travelling in a Motor Cycle bearing No.KL.12D/4954, was knocked down by a car bearing No.KL.12D/1554 insured by the appellant in MACA. 477 of 2012.

3. The policy stands admitted. Because of the collision, serious injuries were resulted to the claimant, which led to the claim petition before the Tribunal. The case projected by the claimant was that he was working as an LIC Agent with monthly

income of Rs.10000/- and that because of the serious injuries resulted from the accident, he had suffered substantial extent of loss since much of his earning capacity had been affected, which in turn was sought to be remedied. The claim was resisted from the part of the Insurance Company on general grounds; particularly with regard to negligence and quantum. Before the Tribunal, Exts.A1 to A10 documents were produced, but no oral evidence was given from either side. On conclusion of the trial, the Tribunal arrived at a finding, fixing negligence on the part of the driver of the car and proceeded to quantify the loss.

4. Though there was a contention for the claimant that he was working as an LIC agent, no document was produced and no evidence was adduced in any manner to substantiate the said contention. In the said circumstance, the Tribunal reckoned a sum of Rs.3000/- as the monthly income for working out the compensation. The disability certified as 14% by the Medical Board vide Ext.C1 certificate was reckoned and loss of disability was fixed accordingly, adopting the multiplier as '16'. Granting amounts under other heads, a total compensation of Rs.143315/-

was awarded , which was directed to be satisfied with interest at the rate of 7.5% per annum. The correctness and sustainability of the said award is under challenge in the appeal filed by the Insurance Company; whereas the claimants have sought for enhancement of the amount, stating that the compensation awarded is inadequate.

5. Heard the learned Counsel for the appellants in both the cases.

6. As mentioned already, the policy stands admitted and the only point for consideration is whether fixation of negligence and quantum awarded by the Tribunal are correct or not; and whether any modification is required under any circumstance. The main contention putforth by the learned Counsel for the Insurance Company is that the observation made by the Tribunal in fixing negligence solely on the part of the driver of the car is not at all correct. Reference is sought to be made to the description of the spot of accident as given in the Scene Mahazar, from which it is discernible that the accident occurred at a point of 3 metres to the west from the eastern tarred end of

the road which is lying north to west, which in fact was having a total width of 4.5 metres. If this be the position, at the time of the accident, the motor cycle which was proceeding from the north to south was completely on the wrong side, having crossed the middle line and as such, fixation of negligence is not correct. On going through the discussion made by the Tribunal in paragraph No.7, it is seen that this aspect was considered by the Tribunal, particularly with regard to description of the place of occurrence with reference to the available materials on record, i.e. scene mahazar, charge sheet and such other records. After making a reference to all these records, the Tribunal made a clear finding that the description as to the exact place of occurrence as given in the Scene Mahazar can only be a mistake. This Court does not find any reason to disagree with the finding arrived at , based on the facts and circumstances; more so when no other evidence was adduced from anybody, particularly, the driver, owner or the insurer, by examining anybody before the Tribunal or even by summoning the police officer, who conducted the investigation or who prepared the scene Mahazar and to have the correct position brought to light. Accordingly, we hold that the finding on negligence does not require any interference.

7. Coming to the quantum of compensation payable, it is true that the claimant did not produce any document regarding the so called avocation as LIC Agent. The claimant has not availed the opportunity to file additional documents, if any, in this Appeal as well along with a petition, which could have been preferred under Order XL1 Rule 27 of the CPC. This being the position, it has to be presumed that the version of the claimant as such is not liable to be entertained and that the Tribunal is justified in holding so. However, the fact remains that the accident occurred was in the year 2009 and as such, the notional income fixed by the Tribunal in the said year as Rs.3000/- is on the lower side. We find it appropriate to have the same enhanced to Rs.4000/- and the loss of earning power is worked out applying the other factors as reckoned by the Tribunal, which comes to Rs. **Rs.107520/-**(4000 x 12 x 16 x 14/100). After giving credit to the amount already awarded by the Tribunal, the balance amount payable under the head

-compensation for permanent disability comes to **Rs.26880/-**

8. Loss of earning has been compensated for a period of 5 months taking the monthly income as Rs.3000/- p.m. Since the monthly income has been enhanced to Rs.4000/- by this Court, the claimant is entitled to get an additional amount of Rs.5000/- under this head.

9. It is seen that the claimant was hospitalized for nearly 72 days by way of three different spells. The nature of injuries sustained as revealed from the wound certificate, has been discussed by the Tribunal (to the effect that there were fractures to the right femur and also fracture to the right patella, apart from other injuries). Considering the ordeal undergone by the claimant, we find it appropriate to grant **Rs.15000/-** more towards pain and suffering. Similarly, we find that no amount was awarded by the Tribunal towards loss of amenities . The extent of disability sustained by the claimant is not under challenge and the same has been reckoned by the Tribunal as 14%. This being the position, we find it appropriate to grant a sum of **Rs.50000/-** under this head. The total additional

compensation payable in respect of the injuries sustained by the claimant comes to **Rs. 96880/- (Rupees ninety six thousand eight hundred and eighty only)**(26880 + 5000 + 15000 + 50000). We find it appropriate to order the same to be satisfied with interest at the rate of **9%** per annum from the date of filing of the petition till realization. Since policy is admitted, we direct the Insurance Company to satisfy the said amount within one month from the date of receipt of a copy of this judgment.

The appeal filed by the Insurance Company stands dismissed and the appeal filed by the claimant stands allowed to the said extent. No cost.

P.R. RAMACHANDRA MENON,
JUDGE

K. HARILAL,
JUDGE

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