

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 1083 of 2005 ()

AGAINST THE AWARD IN OPMV 2315/1995 of M.A.C.T., PALAKKAD
DATED 31-12-2004

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APPELLANT/PETITIONER.:

RAVI, S/O.MANICKAN, RESIDING AT
KUTTYADAM, MUTHALAMADA II VILLAGE, MUTHALAMADA,
CHITTUR TALUK, PALAKKAD.

BY ADVS.SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SRI.SREEKANTH.K.R

RESPONDENT(S)/RESPONDENTS.:

1. VIJAYAN, S/O. CHANDRAN, RESIDING AT
KATTIL HOUSE, NEDIYIRUPPU P.O.KONDOTTI VIA. (*DELETED)

2. P.MOHAMMED, S/O.AHAMEDKUTTY,
RESIDING AT KOLLARADIKA HOUSE, MORAYOOR P.O.
MALAPPURAM DISTRICT.

3. NEW INDIA ASSURANCE COMPANY LIMITED,
TIED DIVISION 121400, NEW INDIA CENTRE, 17A
COOPERAGE ROAD, BOMBAY.

(*THE FIRST RESPONDENT IS DELETED FROM THE PARTY ARRAY AS
PER ORDER DATED 1.9.2015 IN I.A.2468/2015 IN MACA.1083/05)

R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

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

M.A.C.A.No.1083 of 2005

Dated this the 1st day of September, 2015.

JUDGMENT

Harilal, J.

The appellant is the claimant in O.P(MV). No.2315/1995 on the files of the Motor Accidents Claims Tribunal, Palakkad. The above claim petition was filed under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries suffered by him in a motor accident. According to him, on 11.2.1995 at about 9.45 A.M., while he was riding his bicycle through the public road at a place called "Vedachinnanur" at Sathyamangalam, a Tempo van bearing Registration No.KL-10/A-4662, driven by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent, came from the opposite side and dashed against his bicycle and as a result, he had sustained grievous injuries. The accident occurred due to the rash and negligent

driving of the 1st respondent and thereby the respondents are jointly and severally liable to pay compensation for the injuries suffered by him. He claimed a total sum of Rs.1,17,300/- as compensation.

2. The respondents 1 and 2 remained ex parte and the 3rd respondent filed a written statement admitting the policy; but denying the liability and challenging the quantum of amount claimed by the appellant. The appellant adduced evidence which consists of Exts.A1 to A6 and X1. After considering the evidence on record, the Tribunal passed the impugned award granting Rs.15,000/- as compensation to the appellant. Dissatisfied with the quantum of compensation determined by the Tribunal, this appeal is filed on various grounds.

3. Heard the learned counsel for the appellant as well as the learned counsel appearing for the respondents.

4. The learned counsel for the appellant advanced

arguments challenging the determination of the quantum of compensation under various heads. According to the learned counsel, the Tribunal had failed to consider the severity of the injuries suffered by the appellant in its correct perspective. The Tribunal failed to consider the pain and sufferings and also the loss of amenities caused by the accident and no amount has been awarded for the loss of amenities.

5. Per contra, the learned counsel for the respondents advanced arguments to justify the determination of the quantum of compensation. According to him, the Tribunal has considered the sufferings and resultant loss caused by the injuries, in its correct perspective and the quantum of compensation has been determined on the basis of the evidence available on records only.

6. In view of the rival contentions raised at the Bar, the question to be considered is, whether the appellant is entitled to get enhanced compensation in

addition to the amount determined and granted by the Tribunal.

7. It is the case of the appellant that he was a coolie worker, aged 26 years at the time of accident and was getting Rs.75/- per day. But, the Tribunal fixed monthly income @ Rs.1,500/- only. It is true that there is no evidence to show that he was getting Rs.75/- per day, as claimed by him; but as a coolie worker doing general manual works, in view of the decision in Syed Sadiq, etc. v. Divisional Manager, United India Insurance Company [2014 (2) SCC 735], insistence of documentary evidence to prove his monthly income is unreasonable and illogical. We find that the monthly income fixed by the Tribunal is very low and Rs.2,000/- is just and reasonable and the same would stand re-fixed accordingly. Thus, towards the loss of earnings, for a period of three months, taking Rs.2,000/- as his monthly income, he is entitled to get a total sum of Rs.6,000/-. After giving credit to the amount granted

by the Tribunal under this head, he is entitled to get an additional amount of Rs.1,500/-.

8. Going by the various heads, under which the amount had been determined, it is seen that no amount has been granted for the loss of amenities. In Ext.A4 series Discharge slips produced by the appellant, it is noted that the appellant has sustained multiple injuries and B.K. Slab was given. Ext.X1 is the certificate issued by the Medical Board to the appellant. In Ext.X1, it is noted that the appellant had chip fracture of right talus and crack fracture to right tibia. Having regard to the nature and severity of the fracture sustained to him, in our view, he is entitled to get a compensation for the loss of amenities at least for a period of three months. We find that the appellant is entitled to get an amount of Rs.10,000/- under this head. As regards the pain and sufferings also, for the aforesaid reason we feel that the quantum of amount determined by the Tribunal is a

little low and unreasonable. He is entitled to get a total sum of Rs.15,000/- under this head and after giving credit to Rs.6,500/- granted by the Tribunal, an additional amount of Rs.8,500/- is also due to him in this account.

9. Thus, the appellant is entitled to get an additional compensation of Rs.20,000/- under the above heads. Needless to say, he is entitled to get interest @ 9% per annum from the date of filing the petition till realisation. The 3rd respondent is directed to deposit the compensation within a period of one month from the date of receipt of a copy of the judgment.

This appeal is allowed in part.

P.R. RAMACHANDRA MENON, JUDGE

K. HARILAL, JUDGE

okb.