IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

MACA.No. 1091 of 2005 ( )

(AGAINST THE AWARD IN OPMV 870/2000 of ADL.D.C. & MACT,THODUPUZHA DATED 14-05-2004)

APPELLANT(S)/APPELLANT/PETITIONER IN OP::

GIBI
AGED 28 YEARS, THOTTUNGAL HOUSE, AMAYAPRA KARA
UDUMBANNOOR P.O., UDUMBANNOOR VILLAGE.

BY ADVS.SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL
SMT.M.A.VAHEEDA BABU

RESPONDENT(S)/RESPONDENTS::

1. SHABEER T.A.
THAIPPARAMBIL HOUSE, UDUMBANNOOR P.O., THODUPUZHA.

2. N.K. HAMEED, S/O. KOYAKUTTY,
NADUPARAMBIL HOUSE, KARIMANNOOR P.O.
KARIMANNOOR VILLAGE.

3. THE NATIONAL INSURANCE CO. LTD.,
THODUPUZHA.

R1 BY ADV. SRI.T.V.GEORGE
R,R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 16-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
ANU SIVARAMAN, JJ.

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M.A.C.A.No. 1091 OF 2005

....

Dated this the 16th July, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Inadequacy of compensation ordered by the MACT, Thodupuzha in O.P.(MV)No. 870 of 2000, in respect of the injuries sustained by the appellant and exoneration of the I nsurance Company from the liability, made the appellant to approach this Court by filing this appeal.

2. The accident occurred on 15.06.2000 when the appellant was travelling in the cabin of a goods carriage bearing No.KL.6/5394 along with the owner of the goods. They were proceeding from Kozhikode to the destination at Idukki. Because of rash and negligent driving, the vehicle capsized causing serious injuries to the appellant which led to the claim petition. The matter was considered by the Tribunal along with a connected matter and a common award was passed, whereby a total sum of Rs.39070/- was awarded with interest at the rate

of 6% per annum, based on the notional income taken as Rs.2000/- per month, thus giving rise to the challenge.

3. Heard the learned Counsel for the appellant as well as the Standing Counsel for the Insurance Company and the learned Counsel for the first respondent/Driver. Despite completion of service of notice by effecting paper publication , the second respondent, who is the owner/insured has not appeared before this Court .

4. The factual position revealed from the materials on record is that the appellant did not choose to enter the box and adduce any evidence with regard to the claim, nor was there any evidence, documentary or otherwise, to show the actual income. No certificate was produced to show the percentage of disability as well. It was in the said circumstance, that the matter was finalised by the Tribunal as mentioned above.

5. After hearing both the sides, we find that fixation of negligence upon the driver of the lorry is correct and not assailable. Coming to the compensation awarded , the following are the amounts awarded by the Tribunal under different heads.

Head	Amount awarded by the Tribunal (Rs.)
Loss of earning	6000
Transportation to hospital	1000
Extra nourishment	500
Damage to cloths	250
Bystander expense	1000
Medical Bills	15321
Pain and suffering and loss of amenities	15000
TOTAL	39071 (Rounded to Rs.39070/-)

6. We find that the appellant was initially admitted in the Medical College, Kozhikode, from where he was taken to another hospital at Thodupuzha. Later, he had to be hospitalized at Kolencherrry for different spells. By virtue of the turn of events, this Court finds that the amount of Rs.1000/- awarded under the Head Transportation to hospital is inadequate and that the appellant is entitled for **Rs.1000/-** more under this Head. Considering the prolonged treatment and the necessity to have support of the bystander, we find it fit and

proper to grant **Rs.1000/-** more, over and above Rs. One thousand awarded by the Tribunal . The injuries sustained by the appellant to the right hand and such other injuries have been taken note of by the Tribunal. We enhance the same by **Rs.5000/**-, more; over and above Rs.15000/- awarded under the Head-'pain and suffering'. It is true that the appellant did not produce any Disability Certificate, but the fact remains that because of the prolonged treatment, the loss of amenities sustained by the appellant requires to be compensated. We grant **Rs.10000/-** under this Head. Because of the lapse on the part of the second respondent/owner of the vehicle, the appellant had incurred much expenditure by causing substituted service so as to ensure his presence. Even after such publication, the said respondent has not turned up. In the above circumstance,we grant a sum of **Rs.5000/-** towards incidental expenses. The total enhanced compensation, over and above the amount awarded by the Tribunal would come to **Rs.22000/-**. which will carry interest at the rate of 9% per annum from the date of application, till satisfaction.

7. With regard to the liability fixed upon the owner, exonerating the insurance company, it is to be noted that the policy produced before the Tribunal did not provide for coverage . The added premium collected, over and above the 'third party premium' was only in respect of the enhanced 'T.P. Property liability' and no premium was collected in respect of passengers to be carried in the cabin of the goods carriage. The law is well settled that a passenger travelling in a goods vehicle is not entitled for any coverage in view of law declared by the Apex Court in ***New India Assurance Co. Ltd. vs. Asha Rani and others*** **(2010)3 SCC 223].** The case of the appellant is that he was travelling in the vehicle along with the owner of the goods and as such, he is to be deemed as a representative of the owner of the goods. We find it difficult to accept the said proposition, in view of the fact that the statute recognises only *the owner or his representative* to be carried in the cabin of a goods carriage, who is entitled for coverage under the policy.

8. In the instant case, admittedly, the owner was also travelling in the cabin of the goods carriage and hence there was

no need, necessity or occasion for the appellant to travel as a 'representative of the owner of the goods'. He might have travelled as an employee of the owner of the goods, which does not envisage any coverage under the policy.We find support from the land declared by the apex court in ***Sanjeev Kumar Samrat vs. National Insurance Co.Ltd***.[(**2013 (1) KLT 41 (SC)**] and by another Division Bench of this Court in MACA 1641 of 2010.

In the above circumstance, we find that the finding of the Tribunal, exonerating the insurance company from the liability does not call for any interference. The enhanced amount shall be satisfied by the concerned respondents with interest as ordered above . Appeal is disposed of

P.R. RAMACHANDRA MENON,
JUDGE.

ANU SIVARAMAN,
JUDGE.

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