

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

MACA.No.611 of 2012 ()

AGAINST THE AWARD IN OPMV 1351/2006 of MACT, IRINJALAKUDA
DATED 04-11-2011

APPELLANT(S)/PETITIONER :

JAYAN, S/O.GOVINDANKUTTY,
KODAMUKKIL HOUSE, MUPLIYAM VILLAGE
THRISSUR DISTRICT.

BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENT(S)/RESPONDENTS:

-
1. P.O. THOMAS
S/O.OUSEPH, PERINCERY HOUSE, P.O.ANCHERY
THRISSUR DISTRICT-680001.
 2. ELSY VARGHEESE,
W/O.LATE VARGHEESE, PANAKKAL (H)
KUNNAMKULAM DESOM & VILLAGE
THRISSUR DIST.-680001.
 3. THE MANAGER
UNITED INDIA INSURANCE CO.LTD., FAIZAL BLDG.
MAIN ROAD, OTTAPPALAM-679101.

R3 BY ADV. SMT.D.GEETHA
ADV. SMT.K.SHERIN MOHAN
SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

vs

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
= = = = =
M.A.C.A.No.611 of 2012
= = = = =
Dated this the 20th day of May, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in OP(MV) No.1351 of 2006 on the file of the Motor Accident Claims Tribunal, Irinjalakuda. By award passed on 04.11.2011, the Motor Accident Claims Tribunal awarded a sum of ₹1,28,860/- together with interest and proportionate costs as against the appellant's claim for award of a sum of ₹3,00,000/- as compensation. The appellant has, aggrieved by the quantum of compensation awarded by the Tribunal, filed this appeal.

2. We heard Sri.Shaju Purushothaman, learned counsel appearing for the appellant and Sri. John Joseph Vettikkad, learned counsel appearing for the third respondent-Insurer.

3. The fact that the motor vehicle involved in the accident which belonged to the predecessor-in-interest of the second respondent was covered by a valid policy of insurance issued by the third respondent is not in dispute. Before the tribunal, the appellant claimed a sum of ₹15,000/- as compensation towards loss of earnings for a period of three months. The Tribunal awarded only ₹6,000/- on that count,

taking the monthly income as ₹3,000/-. The records disclose that the appellant had produced before the Tribunal Ext.A10 salary certificate issued by PW2, the employer, to contend that his monthly salary was ₹3,300/-. However, on the short ground that, as a trainee, the appellant claimant would not be getting a salary but only a stipend, the Tribunal held that compensation can be awarded for loss of earnings treating the monthly income as only ₹2,000/-. In our opinion, in the absence of any material to doubt the authenticity and genuineness of Ext.A10 and in the light of the testimony tendered by PW2, the employer, the Tribunal ought to have awarded compensation for loss of earnings, treating the amount mentioned in Ext.A10 as the monthly income. We accordingly hold that the appellant is entitled to a total compensation of ₹9,900/- (Rupees Nine Thousand and Nine Hundred only) under the head loss of earnings for a period of three months. By the impugned award, the Tribunal has awarded ₹6,000/- under that head. The appellant will therefore be entitled to an additional compensation of ₹3,900/- (Rupees Three Thousand and Nine hundred only) as compensation for loss of earnings.

4. The impugned award discloses that though the Motor Accident Claims Tribunal had considered Ext.A5 certificate issued by the Medical Board constituted by the Superintendent of Government Medical College Hospital, Thrissur and had also taken note of the fact that the Medical Board has assessed the claimant's disability at 10%, the Motor Accidents Claims Tribunal did not award any compensation towards permanent disability. The records disclosed that at the time of the accident the appellant was aged 28 years and was employed as a Die-Maker earning a monthly salary of ₹3,300/-. Having regard to the nature of the injuries sustained by the appellant and the degree of disability as assessed by the duly constituted Medical Board, we are of the opinion that the appellant is entitled to a compensation of $\text{₹}3,300 \times 12 \times 17 \times 10 / 100 = \text{₹}40,800/-$ (Rupees Forty Thousand and Eight Hundred only) under that head. Likewise, the Tribunal has also not awarded any compensation towards loss of amenities of life. It is not in dispute that the appellant had undergone treatment as an inpatient at West Fort Hospital, Thrissur for 27 days during the period from 23.10.2005 to 19.11.2005. He had also expended a sum of ₹1,08,360/- (Rupees

One Lakh Eight Thousand Three Hundred and Sixty only) towards medical expenses. Having regard to the nature of the injuries sustained by the appellant, we are of the opinion that he is entitled to be awarded a sum of ₹10,000/- (Rupees ten thousand only) under the head loss of amenities of life. The appellant is in our opinion, thus entitled to an additional compensation of ₹54,700/- (Rupees Fifty Four Thousand Seven Hundred only), over and above the compensation awarded by the Tribunal. As stated earlier, the third respondent-insurer has no dispute regarding the fact that motor vehicle involved in the accident which belonged to predecessor-in-interest of the second respondent was covered by a valid policy of insurance issued by it.

We accordingly allow the appeal and award an additional compensation of ₹54,700/- (Rupees Fifty Four Thousand and Seven hundred only) to the appellant claimant. The third respondent insurer is directed to deposit in the Motor Accident Claims Tribunal, Irinjalakuda for payment to the appellant the aforesaid sum of ₹54,700/- (Rupees Fifty Four Thousand and Seven Hundred only) with interest at the rate of 9% per annum on the said sum from the

date of petition till the date of deposit. Such deposit shall be made within two months from today. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj