

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 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

MACA.No. 1112 of 2005 ()

AGAINST THE AWARD IN OPMV 688/2001 of ADL.D.C. & MACT, THODUPUZHA DATED
30-12-2004

APPELLANT(S)/APPELLANT/PETITIONER::

SHANMUGHANATHAN, S/O RAMAN,
AGED 44 YEARS, RESIDING AT PUTHUKAD DIVISION
KALLAR ESTATE, K.D.H. VILLAGE, DEVIKULAM TALUK.

BY ADV. SRI.S.K.MURALEEDHARA KAIMAL

RESPONDENT(S) :

1. PALANISAMY, S/O RAMAN,
RESIDING AT KALLAR ESTATE, K.D.H. VILLAGE
DEVIKULAM TALUK.

2. THANKACHAN, S/O. PHILIPOSE ULAHANNAN,
THENAKARA HOUSE, KARINILAM P.O., MUNDAKKAYAM.

3. UNITED INDIA INSURANCE CO.LTD.,
C.M. STREET, CHENNAI.

R2 BY ADV. SRI.JOSY ANTONY

R3 BY ADV.JOHN JOSEPH VETTIKKAD(NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A. No. 1112 of 2005

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Dated, this the 6th day of October, 2015

JUDGMENT

Harilal, J.

Appellant is the claimant in O.P.(MV) No. 688 of 2001 on the files of the Motor Accidents Claim Tribunal, Thodupuzha. The above petition was filed under Section 166 of the Motor Vehicles Act claiming compensation for the injuries suffered by him in a road traffic accident. According to the appellant on 21.11.99 at 12 p.m. while he was travelling in a jeep bearing registration No. KL 5T 7225, it hit against a rock and thereby the appellant sustained severe injuries on his hand. The accident was occurred due to the rash and negligent driving of the jeep by the first respondent. The jeep was owned by the second respondent and insured with the 3rd respondent at the time of the accident. Thus the respondents are jointly and severally liable to pay compensation to the appellant for the injuries suffered by him. He claimed an amount of Rs.3,00,000/- as compensation under various heads.

2. The respondents 1 and 2 remained exparte. The third respondent filed a written statement contending that the vehicle was not insured with the said respondent. It was also contended that the quantum of compensation claimed under various heads are exorbitant and disproportionate with the nature of injuries suffered by the appellant.

3. To substantiate the claim, Exts. A1 to A10 documents were marked. No oral evidence has been adduced either the appellant or the respondents. After evaluating the evidence on record, as disclosed by Exts. A1 to A10, the Tribunal passed impugned Award granting a total compensation of Rs.92,122/- with interest @ 6% p.a. The inadequacy of the quantum of compensation determined by the Tribunal under various heads is under challenge in this appeal.

4. The learned counsel for the appellant advanced arguments by contending that the quantum of compensation determined under various heads are inadequate and disproportionate with the grievous nature of injuries and the resultant permanent damages caused to him. The learned counsel mainly focused on the inadequacy of the quantum determined under the head of loss of

earnings, permanent disability, medical treatment, transportation etc. Per contra the learned counsel appearing for the respondents advanced the arguments to justify the quantum of compensation determined by the Tribunal under various heads. According to the learned counsel for the 3rd respondent, the quantum of compensation determined by the Tribunal can be justified in view of the evidence available on record.

5. The point to be considered is, whether the appellant is entitled to get enhancement in quantum of compensation determined under any of the heads in the impugned Award.

6. It is the specific case of the appellant that he was a worker of Tata Tea Ltd. and he claimed that he was getting Rs.2000/- per month. But the Tribunal has taken a notional income of Rs.1500/- only. The third respondent has not disputed the claim of the appellant that he was a worker of Tata Tea Ltd. at the relevant point of time. In the said circumstances, considering the money value and such other relevant aspects prevalent in the year 1999, we find it just and proper to fix Rs.2000/- as monthly salary of the appellant. Going by the impugned Award, it is seen that he was hospitalized as inpatient for 27 days. Considering the

long duration of treatment as inpatient, we find that the loss of earnings granted for one month is inadequate and same deserves to be enhanced to a period of three months. Therefore, for loss of earnings, the appellant is entitled to get Rs.6000/- and after giving credit to the amount granted by the Tribunal, he is entitled to get an additional amount of **Rs.4500/-** (Rs.6000 - Rs.1500) under this head. For transportation, the Tribunal has granted only a Rs.2000/-. But going by the medical records, it is seen that he was treated in different hospital at different times. Considering that aspect, the transportation expenses will stand enhanced to Rs.3000/- and after crediting the amount already granted by the Tribunal, the appellant entitled to get **Rs.1000/-** more under this head.

7. Coming to the permanent disability, it is seen that even though the Medical Board has issued Ext.A6 disability certificate wherein the disability was assessed @ 45%, in the Award it is mentioned as 40% only. We have gone through the nature and severity of injuries suffered by the appellant. We find that the percentage of disability taken by the Tribunal is insufficient, the same would stand enhanced to 30%. The Tribunal has granted

only Rs.54000/- under the head of permanent disability. When taking permanent disability of 30%, the appellant is entitled to get Rs.1,08,000/- $[2000 \times 12 \times 15 \times 30/100]$ as compensation under this head. After giving credit to Rs.54000/- granted by the Tribunal, the appellant is entitled to get **Rs.54000/-** more under this head.

8. The Tribunal has granted Rs.16,171.70 only for the treatment expenses, though the appellant produced Exts. A7 and A10 series medical bills. Going by the Award, it is seen that the appellant has expended Rs.39111.70. But the Tribunal has taken only Rs.16,171.70 for the reason that there are no bills for Rs.22940. We have examined Ext. A10 series, the bills pertaining to Rs.22940 which had been issued by Jawahar Trauma Care Centre, Rajapalayam, wherein grievous nature of injuries and the treatment given to the appellant for the said injuries are given in detail. The surgery charges noted in Ext. A10 is extracted below:

"Received the sum of Rs.22,940/- (Rupees Twenty two thousand Nine hundred and Forty only) from the patient 'Mr. R. Shanmuganathan towards surgery charges as per the following.

DOA : 28.11.1999

DOD : 23.02.1999 26 days

Consultation : 100

First Aid Management : 250

1st Surgery on 28.11.99

Surgeon Fees : 3500

Anesthetist's Fees : 1200

Theatre charge : 1750

K wire : 250

Assistant Fees : 750

IInd surgery on 1.12.199

Surgeon : 3500

Implant : 1750

Anesthetist fees : 1250

Assistant Fees : 750

Theatre charges : 2500

Room rent 125 x 26 : 3250

Doctor visiting, Nursing &

Injunction charges : 2160

Total Amount : Rs.22940/-

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(Rupees Twenty two thousand nine hundred and forty
only)

Medical Certificate

This is to certify that Mr. R. Shanmuganathan

working in Kallar estate Pudukadu Division, Moonar, sustained compound (Grade III) shattered elbow ® side in a RTA. He got admitted in my hospital on 27.11.99. He is undergoing treatment under my care. It may take four month from the date of injury to recover from the illness.

Sd/-

Dr. P.V. JAWAHARLAL M.B.B.S.,D.ORTHO
JAWAHAR TRAUMA CARE CENTRE, 130
KAMARAJ NAGAR, RAJAPALAYAM 626 117

We find no reason to brush aside this certificate, which was issued by the doctor who treated the appellant. Therefore, we find that the appellant is entitled to get **Rs.22940/-** more expended for treatment, which is specifically described in Ext. A10 series of bills.

9. We notice that eventhough the appellant was treated as inpatient for 27 days in a hospital, no amount has been granted for loss of amenities. Considering the long duration of treatment and the discomfort suffered by him during that period, we find that the appellant is entitled to get **Rs.15,000/-** towards the loss of amenities.

10. Thus the appellant is entitled to get additional compensation of **Rs.97440/- (Rupees Ninety seven thousand**

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Four hundred and Forty only). Needless to say the appellant is entitled to get interest @ 9% for the enhanced amount. The third respondent Insurance Company is directed to deposit the said amount within a period of two months from today.

The appeal stands disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge