

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

MACA.No. 1114 of 2005 ()

**AGAINST THE AWARD IN OP(MV) 1004/2001 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THODUPUZHA DATED 29-11-2004**

APPELLANT/PETITIONER IN THE OP(MV):

**M.I.BALAKRISHNAN, AGED 52 YEARS
S/O.ITTYATHI, MANAGALAMUNDAKKAL HOUSE
PERINGASSERY P.O., THODUPUZHA.**

**BY ADVS.SRI.M.R.SUDHEENDRAN
SRI.P.A.KUMARAN**

RESPONDENTS/RESPONDENTS IN THE OP (MV):

- 1. SANTHOSH, AGED 32 YEARS
S/O.FRANCIN, THEVARUPATHIYIL HOUSE, ELEMDESAM
KALAYANTHANI P.O., THODUPUZHA.**
- 2. PAILYCHAN, KANIYANKUZHIIYIL HOUSE,
VELLIYAMATTOM VILLAGE, VELLIYAMATTOM P.O.**
- 3. UNITED INDIA INSURANCE COMPANY LTD.,
PERUMBAVOOR.**

R3 BY ADV. SRI.A.R.GEORGE

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.1114 of 2005

Dated this the 1st day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed by the appellant claiming further compensation to the building damaged when stage carriage bus driven by the first respondent hit the same. The Tribunal awarded a total sum of Rs.70,000/- in two case viz. O.P.(M.V.)Nos.1004/2001 and 1005/2001.

2. The main ground taken is that the Tribunal could have accepted the report of the Commissioner who was examined as PW2. His assessment was at Rs.2,70,800/-.

3. We have gone through the award. The Tribunal assessed the cost of the construction of the building as Rs.70,000/- and held that the petitioner in O.P.(M.V.) No.1004/2001 will be entitled for 55% of the compensation awarded for the building and the petitioner in O.P.(M.V.) No.1005/2001 will be entitled to get 45%. Therefore the amount earmarked to the appellant is Rs.38,500/-.

4. Heard both sides.

5. It was brought to our notice by the learned counsel for the appellant that there was another appeal from O.P.(M.V.)No.1005/2001 as M.A.C.A.No.1028/2005, which was disposed of by the judgment of this Court dated 28.2.2011 as per which the appellant therein was granted an additional compensation of Rs.26,500/-. In paragraph 7 of the judgment this Court has entered the finding in the following manner:

It is a building constructed during 1988-89 and was constructed with mud and clay. Taking into consideration the nature of the damage caused to the building and in the light of the Advocate Commissioner's report Ext.C1, we feel that towards the damage caused to the building a compensation of Rs.60,000/- would be reasonable. Thus, the claimant is entitled to an additional compensation of Rs.26,500/-.

Therefore a further amount of Rs.60,000/- has been granted out of which the appellant therein was awarded Rs.26,500/- being 45%. Therefore, this Court has granted more amount by way of income at 84%. Hence, the total amount as far as the appellant will be Rs.73,335/- and after

deducting the amount already awarded the balance amount will be Rs.34,835/-. In tune with direction in M.A.C.A. No.1028/2005 we also grant interest at the rate of 7.5% per annum from the date of petition till realisation and proportionate costs.

The amount will be deposited by the Insurance Company within two months from the date of receipt of a copy of this judgment. The award of the Tribunal is modified to the above extent.

The appeal is disposed of as above.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/