

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

MACA.No. 1117 of 2005

**OP(MV) 172/1999 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ALAPPUZHA. DATED 05-10-2004**

APPELLANT/PETITIONER IN OP(MV)NO.172/1999:

**BABU, S/O.RAGHAVAN,
BABEESH BHAVANAM, KAROOR MURI, PURAKKAD.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENT(S)/RESPONDENTS IN OP(MV)NO.172/1999:

**1. EASWARAN, S/O.MUTHUSWAMY GOUNДАР,
PALLANAİKAM PALAYAM, MANOOR P.O., KANAGAYAM,
TAMIL NADU.**

*** 2. MUTHUSWAMY, (DELETED)
S/O.RAMASWAMY GOUNDER, H.NO. 51/MOORTHIREDDY PALAYAM,
KANAGAYAM, TAMIL NADU.**

*** RESPONDENT NO.2 IS DELETED FROM PARTY ARRAY AS PER ORDER
DATED 25/9/15 IN IA.3489/13 IN MACA.1117/2005.**

**3. THE NATIONAL INSURANCE CO.LTD.,
ALAPPUZHA.**

R3 BY ADV. SMT.SARAH SALVY

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

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

M.A.C.A.No. 1117 of 2005

Dated this the 7th October, 2015

JUDGMENT

Ramachandra Menon, J.

The casual way of finalisation of claim petition by awarding a lump sum compensation by the Tribunal, in spite of serious injuries suffered by the appellant involving fracture to right ulna and such other consequences is sought to be challenged in this appeal.

2. The accident occurred on 30.9.1996, when the appellant, who was proceeding along the road about 7.30 a.m., was knocked down by a lorry bearing registration No.TDX-629, owned by the first respondent and insured by the third respondent (the driver was deleted from the party array as per order dated 25.9.2015 in I.A.No.3489 of 2013). The appellant was taken to the Medical College Hospital, Alappuzha, wherein he was treated as an

inpatient for 21 days from 30.9.1996. The loss was sought to be compensated by filing claim petition seeking for an amount of ₹1,60,000/- under different heads. It was stated that the appellant was a carpenter by profession and the seriousness of the injuries had virtually incapacitated him in different ways. The permanent disability was certified by the doctor vide Exhibit A6. The evidence consists of Exhibits A1 to A11 and deposition of PW1, i.e., the appellant. No evidence was adduced, either oral or documentary, from the part of the respondents.

3. After analysing the facts and figures, the Tribunal arrived at a finding that the accident was occurred because of the negligence on the part of the driver of the bus and proceeded to fix compensation accordingly. The claim of the appellant was that he was earning a monthly income of ₹3,500/-. But, observing that no evidence was adduced, the Tribunal awarded only a lump sum compensation of ₹25,000/-, which was directed to be satisfied with interest at 6% per annum and a cost of ₹

500/-. Since the policy was admitted, the third respondent Insurance Company was directed to satisfy the said amount. Inadequacy of compensation made the appellant to approach this Court by filing this appeal.

4. Heard learned counsel for the appellant as well as the learned counsel appearing for the Insurance Company.

5. Going by the contents of the award, the course pursued by the Tribunal cannot but be deprecated, in view of the fact that, granting of compensation on a 'lump sum' basis, as it was being done applying the **Nance's case (Nance v. British Columbia Electric Railway Co. Ltd (1951) Appeal Cases 601)** was held as not acceptable to Indian context, where it has to be based on the 'multiplier method', following the 'Davies formula' (**Davies and Anr. v. Powell Duffryn Associated Collieries Ltd. (1942) Appeal Cases 601**). A land mark judgment of the Apex Court in this regard is reported in **K.S.R.T.C v. Susamma Thomas** (1994(1) KLT 67). Despite the law declared by the Apex Court, which is the

law of the land, the Tribunal adopted a short-cut method, which cannot be sustained.

6. The injuries sustained by the appellant as discussed by the Tribunal in paragraph 7 of the award are as given below:

“7.The petitioner had pain and swelling and pain and tenderness all over the body. Ext.A9 discharge card shows that he was admitted in the Medical College Hospital, Alappuzha on 30.9.96 and treated till 21.10.96 as inpatient. It shows that he had fracture dislocation and that he was treated by plaster immobilisation. At the time of discharge he was advised to continue medicine. The plaster was removed on 31.10. Thereafter he was given follow up treatment. Exts.A7 and A8 show that the treatment continued as outpatient in the Medical College Hospital, Alappuzha for some time. Ext.A10 is the medical certificate issued by Dr.Mohamed Ashraf. The petitioner advised rest for 3 months. So, the injuries and treatment are proved by the above medical records.”

7. There is no dispute with regard to the fact that the fracture was sustained by the appellant and he was hospitalised for 21 days. Disability was certified by the

Doctor as 8% and the Tribunal itself found it necessary to reckon 5% for granting the compensation. It is true that the appellant did not choose to examine the doctor concerned. But still, the Tribunal has reckoned 5% as the disability for working out the compensation, and we do intend to have it varied in any manner. But the compensation requires to be calculated adopting the 'multiplier method', to be 'just' compensation envisaged under Section 168 of the Motor Vehicles Act.

8. The appellant was stated as a carpenter. It is true that the appellant did not choose to mount the box. But following the dictum laid down by the Apex Court on many an occasion, a pragmatic approach has to be taken to fix the notional income considering the needs and necessities of day-to-day life and other relevant facts and circumstances. The appellant was a person aged 40 years, who was maintaining his family. The accident was in the year 1996. Considering the money value and the relevant economic circumstances, we deem it appropriate to fix

the monthly income as ₹2,500/- as on the date of accident.

9. Considering the nature of injuries, particularly hospitalisation of nearly 21 days, suffering fracture to the right ulna, it can be safely presumed that the appellant was not in a position to resume the work atleast for a period of four months. In such circumstances, the loss of earning requires to be compensated to an extent of **₹10,000/-**. We award the same accordingly. By virtue of hospitalisation for a period of 21 days and the attendant circumstances, we find it appropriate to grant a sum of **₹2,000/-** under this head towards the bystander expenses. In view of the necessity to have undergone various journeys in connection with the treatment, we award a sum of **₹1,000/-** towards transportation expenses plus **₹500/-** towards loss of clothing and such other materials. Based on the notional income and the disability of 5% as accepted by the Tribunal, the loss of earning power is worked out as $2500 \times 12 \times 5 / 100 \times 15$ (15 being the

multiplier at the age of the appellant), which comes to **₹22,500/-**. By virtue of the fracture suffered by the appellant, he is entitled to be compensated towards pain and suffering. We award a sum of ₹15,000/- under this head. By virtue of permanent disability suffered by the appellant, the loss of amenities has to be compensated. We award a sum of **₹10,000/-** under this head as well. The medical expenses incurred by the appellant as observed by the Tribunal with regard to the medical bills produced is ₹2,911.60 (paragraph 9). We award a sum of **₹3,000/-** in this head as well. The total compensation payable under the above heads comes to **₹63,500/-** (rupees sixtythree thousand five hundred only). After giving credit to the same of ₹25,000/- awarded by the Tribunal towards lump sum compensation, the resultant figure is ₹38,500/- (rupees thirty eight thousand five hundred only), which shall be satisfied with interest. The Tribunal has awarded interest at the rate of 6% per annum. The interest, which was being generally ordered

at the relevant time was about 7.5% per annum. Now it is 9% as declared by the Supreme Court. Striking a balance, we deem it appropriate to award interest at the rate of '8%' per annum, the enhanced compensation, from the date of filing the claim petition till the satisfaction. Since the policy is admitted, we direct the third respondent Insurance Company to deposit the amount within one month from the date of receipt of a copy of this judgment.

The appeal stands allowed with the said extent.

P.R.RAMACHANDRA MENON
JUDGE

K.HARILAL
JUDGE

vgs9/10/15