

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

MACA.No. 1131 of 2005 ()

AGAINST THE AWARD IN OPMV 1795/2000 of M.A.C.T., THRISSUR,
DATED 02-08-2004

....

APPELLANT(S) /PETITIONER:

HONEY RADHAKRISHNAN,
S/O.RADHAKRISHNAN, RESIDING AT PANAMCHERRY HOUSE,
P.O.PUTHOOR, THRISSUR DISTRICT.

BY ADVS.SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SRI.SREEKANTH.K.R
SRI.K.A.NOUSHAD
SRI.JIBU P THOMAS

RESPONDENT(S) /RESPONDENTS:

1. JOSE, S/O.LAZER, RESIDING AT
THYKKATTIL HOUSE, THRISSUR DISTRICT.

2. THE UNITED INDIA INSURANCE COMPANY
LIMITED, THRISSUR.

R2 BY ADV. SRI.N.S.MOHAMMED USMAN
R1 BY ADV. SRI.M.P.ASHOK KUMAR
R2 BY ADV.JOHN JOSEPH VETTIKKKAD (NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

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

M.A.C.A.No.1131 of 2005

Dated this the 9th day of October, 2015.

JUDGMENT

Harilal, J.

The appellant is the petitioner in O.P.(MV) No. 1795/2000 on the files of the Motor Accidents Claims Tribunal, Thrissur. The above claim 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 him on 27.5.2000 at about 9 a.m., while he was riding on a motor cycle, through Moorkanikara Road, when he reached Moorkanikara bridge, a motorcycle bearing Regn.No.KL-8/H-7898 ridden by the 1st respondent came in a rash and negligent manner from the opposite direction hit upon his motorcycle and, as a result of the accident, he has sustained grievous injuries. The accident occurred due to the rash and negligent riding of the motorcycle by the 1st respondent. He was the owner-cum-rider of the motorcycle and the 2nd respondent was the insurer of the

vehicle at the time of the accident. So they are jointly and severally liable to pay compensation for the injuries suffered by him. He claimed a total sum of Rs.3 lakhs as compensation.

2. The 1st respondent remained ex parte. The 2nd respondent has filed the written statement admitting the coverage of the insurance policy; but denied the allegations attributing negligence and rashness alleged against the 1st respondent. According to the 2nd respondent, the nature of injuries sustained, treatment and consequential disability alleged thereunder were not supported by sufficient and reliable documents. The accident occurred due to the negligence of the petitioner himself. On the above pleadings, the 2nd respondent prayed for dismissing the claim petition. Later, the 2nd respondent filed an additional written statement contending that the appellant was not duly licensed to ride the motorcycle at the time of the accident.

3. The appellant was examined as P.W.1 and Exts.A1 to A13 were marked. No evidence either oral or documentary had been adduced by the 2nd respondent.

After evaluating the evidence on record, the Tribunal found that the accident was caused by the rash and negligent riding of the motorcycle by the 1st respondent and thereby the 2nd respondent is liable to pay a compensation of Rs.83,000/- with 6% interest to the appellant. The inadequacy of the quantum of compensation granted under various heads is under challenge in this appeal.

4. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

5. The learned counsel for the appellant mainly contended that the Tribunal went wrong by apportioning 30% contributory negligence from the side of the appellant, in the absence of any specific finding as to negligence from the part of the appellant also in causing the accident. It is also contended that the quantum of compensation determined under the heads pain and suffering, loss of amenities and bystander expenses are very low and disproportionate with long duration of period in which he had been in sufferance and discomforts.

6. Per contra, the learned counsel for the 2nd

respondent advanced arguments to justify the quantum of compensation determined under various heads. Further, it is contended that there is a definite finding to the effect that the 2nd respondent also was negligent in riding the motorcycle.

7. The first point to be considered is, whether the apportionment of negligence is justifiable, in view of the evidence on record. In cross examination, P.W.1 himself admitted that he was having only learner's licence at the time of accident and there was nobody else having valid licence on his motorcycle at the time of accident, in observance with the Rules. The Tribunal after examining the entire evidence, particularly, Ext.P2 scene mahazar found that both the appellant and the 1st respondent are responsible for the accident and the negligence contributed by the appellant and the 1st respondent can be assessed at 30% and 70% respectively. We do not find any reason to arrive at a different finding, in view of the admitted fact that the appellant was not duly licensed to ride the motorcycle without a person having duly valid licence on pillion, and thereby he was riding the motorcycle, in violation of the

relevant Rules.

8. The next point to be considered is, whether the appellant is entitled to get any enhancement in the quantum of compensation determined under various heads. The appellant has not adduced any evidence to prove his income. Admittedly, at the time of accident, he was aged 20 years and he was an ITC student only. In such a circumstance, the Tribunal is justified in taking Rs.15,000/- per year as notional income. We find that there is no reason to interfere with the quantum of compensation fixed under the heads of permanent disability and loss of earning power. Though Ext.A12 Disability Certificate shows that the appellant has sustained 15% permanent disability, in Ext.A9 Discharge summary it is stated that fracture is well united clinically and radiologically. Ext.A9 is dated 11.7.2002, whereas Ext.A19 disability certificate is dated 9.8.2002. In such circumstance, the doctor who had issued Ext.A12 should have been examined to prove the credibility of Ext.A12 disability certificate. So, as rightly observed by the Tribunal, Ext.A12 cannot be relied on as such and the Tribunal is justified in assessing disability at 5%.

9. Ext.A3 wound certificate and A6 Discharge summary would show that the appellant has sustained fracture of femur, lacerated wound (Rt.) parietal area. Ext.A8 discharge card would show that he was an inpatient in the hospital from 31.5.2000 to 23.6.2000. He had undergone treatment again as inpatient from 15.7.2002 to 22.7.2002 at Metropolitan Hospital, Thrissur, Ext.A8 shows. Thus, he was treated as inpatient in Metropolitan Hospital for 40 days. Having regard to the long duration of the period in which he had undergone treatment, we find that the quantum of compensation determined for pain and suffering and loss of amenities are inadequate and consequently, the same will stand enhanced to Rs.25,000/- each. Thus, the appellant is entitled to get an additional compensation of Rs.15,000/- under those heads. For the same reasons, the bystander expense also will stand enhanced to Rs.5,000/-. Thus, after giving credit to the amount given by the Tribunal, the appellant is entitled to get a total additional compensation of Rs.17,000/- (5,000 + 10,000 + 2,000). The appellant is also entitled to get interest @ 9% per annum for the enhanced compensation from the date of filing

the petition till realisation; but the appellant is not entitled to get interest for 185 days, the period of delay occurred in filing this appeal. The 2nd respondent is directed to deposit the entire amount within a period of one month from today.

This appeal is disposed of as above.

Sd/—

P.R. RAMACHANDRA MENON, JUDGE

Sd/—

K. HARILAL, JUDGE

okb.