

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

MACA.No. 1254 of 2005 ()

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AGAINST THE AWARD IN OPMV 868/1998 of MACT, IRINJALAKUDA
DATED 15-03-2005**

APPELLANT/PETITIONER IN OP(MV):

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VARGHESE ANTONY,
S/O.ANTONY, NELLISSERY HOUSE,
OLLUKKARA P.O, THRISSUR TALUK
THRISUR DISTRICT.**

**BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH**

RESPONDENTS/RESPONDENTS IN OP(MV):

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1. O.T.JOSE,
S/O. THOMAS, OLAKENGAL HOUSE,
CIJO COTTAGE, POONKUNNAM, THRISSUR.**

**2. C.P.JOSEPH,
CHEMMANNUR HOUSE,
MULANKUNNATHUKAVU,
THIROOR, THRISSUR DISTRICT.**

**3. MANAGER,
UNITED INDIA INSURANCE CO.,
KURUPPAM ROAD, THRISSUR.**

**R1 BY ADV. SRI.DILIP J. AKKARA
R3 BY ADV. SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 16-11-2015, ALONG WITH CROSS OBJECTION No.57/2011 THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

**M.A.C.A No. 1254 OF 2005
&
Cross Objection No. 57 OF 2011**

DATED THIS THE 16th DAY OF NOVEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

M.A.C.A No. 1254/2005

This appeal arises out of an Award passed by the Motor Accidents Claims Tribunal, Irinjalakuda in OP (MV) No.868/1998. The appellant herein is the claimant and the respondents are the respondents before the Tribunal. The accident occurred on 08-02-1998 when a Stage Carriage Bus in which the appellant was traveling collided with another vehicle. Respondents 1 & 2 are the registered owner and driver of the Bus respectively, and the 3rd respondent is the insurer of the said vehicle.

2. The appellant who was aged 38 years at the time of accident sustained 3 compound fracture on his right arm and elbow joint, along with extensive lacerations. He was treated as in-patient during different spells for a total of 108

days. His right hand become completely functionless because of malunion of the fracture. Ext.A9 is an 'Electro Neuromygraph Report' issued from the National Neuro Centre and Ext.A10 is the photograph with the negative, produced before the Tribunal. The permanent partial disability sustained by the appellant due to the loss of function of his right hand was assessed by a qualified Doctor who was examined as PW2 and who had issued Ext.A16 'Permanent Disability Certificate', at 44.96%. It was deposed by the Doctor before the Tribunal that the appellant is not able to use his right hand and the right hand become ornamental, since he could not move his hand. Evidence tendered by PW2 is to the effect that the appellant had sustained 89.9% permanent disability with respect to his upper limb and the total body disability is 44.96%. The Tribunal allowed a total compensation of Rs.2,98,916/- alongwith interest @6% per annum, from the date of filing of petition till realization. It is being not satisfied with the quantum of compensation awarded, the above appeal is filed.

3. It has come out in evidence that the appellant was working as a Drawing Master and Artist in a private (aided) school. At the time of accident he was aged 38 years. It is admitted that he had continued in the job, even after the accident. Therefore the Tribunal found that he has not suffered any loss of earning due to the permanent disability. But a contention was taken that the appellant is entitled to get compensation with respect to the diminished prospects for any post retiral occupation. The Tribunal found that appellant could continue in his employment till the age of 55 years. Therefore compensation under the head of future earning was countenanced only for the period after retirement. Therefore the multiplier of 8 was adopted for the purpose of computing the loss of post retiral occupation. The Tribunal took a notional monthly income at Rs.1,500/- and allowed compensation under that head to the tune of Rs.64,742/-. According to the appellant, the correct multiplier ought to have been adopted considering the age of retirement as 55 or 56 years, is 9 instead of 8. It is also contended that the notional income of Rs.1,500/- adopted is

too meager an amount. While considering the issue, we notice that the appellant was working as a Drawing Master and Artist. Exhibit A11 is the Salary Certificate issued from St.Thomas College Higher Secondary School, Thrissur, which would indicate that during the service he was drawing a monthly salary of Rs.4,700/-. Being an Artist, the appellant could have been availed some post retiral occupation and continued earning even after the retirement. But considering the unforeseen contingencies in life, we are not inclined to adopt even 50% of the salary as the post retiral earning, for the purpose of fixing the above compensation. But on a reasonable estimation we feel that the notional income fixed at the rate of Rs.1,500/- can be enhanced as Rs.2,500/-. Calculated on that basis by adopting the correct multiplier of 9, the appellant is entitled for compensation of Rs.1,21,392/- ($\text{Rs.2,500} \times 12 \times 9 \times 44.96$) in that head. Hence the compensation of Rs.64,742/- awarded on that count will stand enhanced to Rs.1,21,392/-, thereby the appellant will be entitled to get an additional amount of Rs.56,650/-.

4. Towards the cost of extra nourishment and wages to attendants, the Tribunal had allowed a sum of Rs.10,800/-, which according to the appellant too low. Considering the fact that the accident took place in the year 1998 the amount awarded can reasonably be considered as wages paid to the attendants for 108 days. However, we are inclined to allow a further sum of Rs.3,500/- towards extra nourishment. Towards transportation expenses the Tribunal had allowed only a sum of Rs.1,000/-. It is evident that the appellant was admitted as in-patient on different spells and he had continued treatment for quite a long period. He might have incurred transportation expenses on different occasions. Therefore we are inclined to enhance compensation under that head to Rs.5,000/-, which will entitle the appellant to get an additional compensation of Rs.4,000/-.

5. The appellant claimed compensation for permanent disability under different heads, like loss of earning power, loss of amenities, anticipated medical expenses, unhappiness in life, loss of future earning etc,

apart from pain and sufferings. The Tribunal awarded a sum of Rs.20,000/- towards pain and suffering and a sum of Rs.12,000/- towards loss of amenities and happiness in life. We are inclined to enhance the total compensation under those two heads as Rs.50,000/-, which will entitle the appellant to have an additional compensation of Rs.18,000/-.

6. It is evident that the right hand of the appellant has become totally non-functional and only ornamental. Definitely the same would have caused disfiguration which the appellant has to suffer life long. Therefore we are inclined to grant a conventional amount towards compensation for the life long permanent disability and disfigurement as Rs.20,000/-. Eventhough the appellant had canvassed for enhancement of compensation under different other heads, we are not inclined.

7. Hence the appeal is allowed to the extent of enhancing the compensation already awarded by the Tribunal by a further sum of Rs.1,02,150/-. The enhanced amount of compensation will carry interest @ 9% per annum from the date of filing petition till payment.

Cross Objection No. 57/2011

8. The Cross Objection is filed by the 1st respondent in the appeal. The Tribunal while passing the Award found that the 3rd respondent insurer had taken a contention that there was no permit for the vehicle involved in the accident. Hence they filed I.A No.3700/94 before the Tribunal seeking direction to the 1st respondent to produce the permit and fitness certificate. But those respondents were ex-parte and has not produced the permit or fitness certificate. Respondents 1 and 2 have also failed to produce the Driving Licence. Hence the Tribunal permitted the 3rd respondent to recover the compensation amount from the respondents 1 and 2.

9. In the Cross Objection it is contended that, the Stage Carriage Bus involved in the accident was holding a permit in the route Guruvayoor - Thrissur. But on the date of the accident the vehicle was carrying students and teachers of a school on a study tour to Thiruvananthapuram, on the basis of a temporary permit. According to the cross objector, the said temporary permit

could not be produced before the Tribunal as he was remaining ex-parte. It is also contended that the 2nd respondent Driver of the Bus was having a valid Licence and Badge, as evidenced from the records of the police case.

10. The cross objector had filed I.A No.3965/2015 seeking to accept certain documents produced as Annexures 1 to 4. One among such document is the copy of the temporary permit issued to the vehicle in question. It would indicate that the Stage Carriage in question was permitted to be plied between Thrissur and Thiruvananthapuram on 07.02.1998. It is pertinent to note that the accident occurred on the early morning of 08.02.1998, which is on the next day. Contention of learned counsel for the cross objector is that the accident occurred while the Bus was returning from Thiruvananthapuram, after the midnight of 07.02.1998. Therefore the permit need to be considered as valid, is the contention. Further, learned counsel had placed reliance on a Full Bench decision of this court in **Augustin V.M. V Ayyappan Kutty**

@ Mani and Another (ILR 2015(2) KER 764). It is held therein that; if the accident occurred when a permit or fitness certificate ceased to exist, it will amount only to a technical violation and it will not entitle the insurer to disown the liability of the third parties. For avoiding the liability relying on Section 149(2)(a)(i)(c), the insurer should have pleaded and proved that the offending vehicle was used for a purpose not authorised by the permit. It is held that the breach of a condition in respect of non-renewal of certificate of fitness or permit would not entitle the insurer to take up a defence under the above provision. In the case on hand, it is evident that the stage carriage bus in question was under a temporary permit for the period from 31.01.1998 to 19.02.1998, as evident from Annexure A1 letter issued by the Secretary RTA, Thrissur. It is also evident that the vehicle was issued with a temporary permit to take a trip to Thiruvananthapuram on 07.02.1998, which is the previous day of the accident. Therefore it cannot be contended that the vehicle was not having any permit at all as on the date of the accident. In view of the legal position

remaining settled as above, it cannot be contended that there is a breach of condition of the policy with respect to the expiry of the temporary permit issued on 07.02.1998. Therefore the findings arrived by the Tribunal, based on non-production of permit and fitness certificate, cannot be sustained.

11. There exists a further dispute regarding non-production of the Driving Licence. The petitioner had produced the original of the Driving Licence held by the 2nd respondent, Sri. C.D. Joseph. The licence would indicate that it is valid with respect to non-transport vehicle from 16.03.2013 to 15.03.2018 and with respect to transport vehicle from 16.03.2013 to 15.03.2016. But the endorsement contained in the driving licence would indicate that it is a duplicate issued. It would further indicate that the date of first issue of the said licence was on 30.11.1976, and that the licence was valid with respect to heavy passenger motor vehicle from 17.02.1987 onwards. Learned counsel for the cross objector had drawn attention of this court to Ext.A4 document which is the charge sheet

in the criminal case registered with respect to the accident. It is specifically noted in the said charge sheet that the licence of the 2nd respondent was verified by the investigating officer and he was holding Driving Licence No.2696/76 and Badge No.170/78, which were having validity till 16.03.1998. The Driving Licence number mentioned in Ext.A4 charge sheet is the same number of the Driving Licence which is now produced by the cross objector as Annexure A4. Therefore, it is to be held that there was evidence available before the Tribunal with respect to availability of the Driving Licence. The fact that the 2nd respondent was holding a Driving Licence as on the date of accident is now corroborated through the documents produced before this court.

12. The 3rd respondent had filed a counter affidavit to I.A No.3965/2015 raising contentions that the documents produced shall not be accepted, because the cross objector had failed to produce any such documents before the Tribunal, despite specific directions issued in the interim application. When it is evident that the 2nd respondent was

holding a Driving Licence and when it is brought to notice of this court that the contention based on expiry of the permit would not entitle the 3rd respondent to deny the liability, such objections become irrelevant for consideration and we are inclined to take on records the documents produced.

13. Hence, we are inclined to allow the cross objection by reversing the findings contained in the impugned Award to the extent of permitting the 3rd respondent to realise the compensation amount from respondents 1 and 2.

14. In the result, the appeal and the cross objection will stand allowed, to the extent of granting additional compensation to the tune of Rs.1,02,150/- to the appellant along with 9% interest on the said amount from the date of filing till the deposit. The cross objection is allowed and the Award is modified to the extent of imposing liability for payment of compensation on the 3rd respondent. The 3rd respondent will make payment of the total amount of compensation awarded by the Tribunal along with interest,

which is enhanced through this judgment, within a period of two months from the date of receipt of a copy of this judgment.

15. The Registry is directed to return the original Driving Licence produced along with I.A No.3965/2015 filed by the cross objector, since a Photostat copy is already enclosed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG/Vdv

True copy

P.A. to Judge