

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

MACA.No. 771 of 2012 (O)

AGAINST THE AWARD IN OPMV 1435/2005 of MACT ALAPPUZHA DATED 31-12-2011

APPELLANT: 3rd RESPONDENT IN OP(MV) :-

NEW INDIA ASSURANCE CO.LTD.,
BRANCH COIMBATORE,
REPRESENTED BY THE DULY CONSTITUTED ATTORNEY,
(M.G.RAMACHANDRAN NAIR), REGIONAL OFFICE,
KANDAMKULATHY TOWERS, M.G ROAD, KOCHI 682011.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS : PETITIONER & RESPONDENTS 1 & 2 IN O.P.(MV) :-

1. GEORGE T.T.,
S/O THOMAS, THAIPARAMBIL HOUSE, WARD No.XI,
PATHIRAPPALLY P.O, ALAPPUZHA, 688521.
2. R. SENTHILKUMAR,
S/O RAMASWAMI, No.5, RAMASWAMI NAGAR,
KRISHNAPALAYAM P.O, EROAD No.3, COIMBATORE, TAMIL NADU,
PIN 638001.
3. GOVINDA SWAMI,
H1.No.34/158, SREYAS, KALOOR,
KOCHIN 682017.

R1 BY ADV. SRI.J.OM PRAKASH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.771 of 2012

Dated this the 2nd day of November, 2015

JUDGMENT

Anil K.Narendran, J.

The appellant is the 3rd respondent in O.P.(M.V.)No.1435 of 2005 on the file of the Motor Accidents Claims Tribunal, Alappuzha. The said petition is one filed by the 1st respondent herein under Section 166 of the Motor Vehicles Act claiming compensation for the injuries sustained by him in a motor accident occurred on 28.3.2005. The 1st respondent filed a claim petition claiming a total compensation of ₹8,00,000/- under different heads and the Tribunal by the impugned award granted a total compensation of ₹3,53,820/-. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant/insurer of the bus involved in the accident is before us in this appeal.

2. We heard the arguments of the learned counsel for the appellant/insurer and the learned counsel appearing for the 1st respondent/claimant.

3. From the materials on record it is seen that the 1st respondent/claimant sustained injuries in a road accident occurred

on 23.8.2005 at about 4 am. While the 1st respondent/claimant was riding a motor cycle bearing registration No.KL-4/L-2799 through Savakkotta Bridge-KSRTC Bus Stand Road, an air bus bearing registration No.KL-07/AH-8247 driven by the 2nd respondent, owned by the 3rd respondent and insured with the appellant/insurer came in a rash and negligent manner and hit the motorcycle, resulting serious injuries to the 1st respondent/claimant. At the time of the accident, the 1st respondent/claimant was a B.Tech student. He had undergone inpatient treatment in the Medical Trust Hospital, Kochi and in the Indo-American Hospital, Vaikom.

4. On the side of the 1st respondent/claimant PWs.1 to 4 were examined and Exts.A1 to A19 were marked. On the side of the appellant/insurer a copy of the insurance policy was marked as Ext.B1. Ext.X1 is the case sheet and Ext.X2 is the treatment certificate.

5. On an appreciation of the facts and circumstances and also the evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving

of the bus by the 2nd respondent/driver and that the appellant/insurer is liable to pay the compensation amount to the 1st respondent/claimant. Under different heads, the Tribunal awarded a total compensation of ₹3,56,820/- and directed the appellant/insurer to pay the said amount together with 7.5% interest from the date of petition, i.e., from 14.11.2005 till realisation, together with cost.

6. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal under different heads requires any interference in this appeal.

7. The pleadings and the materials on record would show that at the time of accident the 1st respondent was studying for B.Tech course. He got selection as Airman and only because of the injuries sustained in the accident he could not join duty. If he would have got employment, he should have earned ₹9,000/- as basic pay. Taking into consideration of all these aspects and also the fact that the 1st respondent is a B.Tech degree holder, the Tribunal fixed a notional monthly income of ₹6,500/-. In the

absence of any vitiating circumstances, we find absolutely no grounds to interfere with the assessment so made by the Tribunal.

8. The learned counsel for the appellant/insurer would contend that, when the Tribunal granted a sum of ₹1,82,520/- towards compensation for loss of earning power, it ought not to have awarded a further sum of ₹50,000/- towards compensation for disability. We find considerable force in the aforesaid contention made by the learned counsel for the appellant. In that view of the matter, the compensation for disability awarded by the Tribunal is re-fixed as ₹25,000/-.

9. However, we note that, towards pain and suffering the 1st respondent claimed ₹50,000/-. But, the Tribunal awarded only a meagre sum of ₹15,000/- under this head. Considering the nature of injuries sustained and the treatment undergone, which are reflected from the documents on record, we find that the Tribunal ought to have awarded a sum of ₹30,000/- as compensation towards pain and suffering, which would represent a just and reasonable compensation under the above head.

Similarly, towards loss of amenities the Tribunal granted only ₹40,000/-. Considering the disabilities sustained, as reflected from the disability certificate, we find that the Tribunal ought to have awarded a sum of ₹50,000/- as compensation towards loss of amenities.

In the result, after reworking the compensation under different heads, the total compensation payable to the 1st respondent/claimant will remain as ₹3,53,820/- and the appeal is disposed of accordingly.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj

True copy

P.A to Judge