

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 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

MACA.No. 1278 of 2005 ()

AGAINST THE AWARD IN OPMV 180/2001 of MACT MUVATTUPUZHA DATED 30-03-2004

APPELLANT(S)/APPELLANT/PETITIONER:

JOBY, S/O.SCARIA,
RESIDING AT KODICHALIL HOUSE, PUTHENCRUZ BHAGAM
PIRAKKUNNAM KARA, ERIAMANGALAM VILLAGE.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENT(S) :

1. SAJUMON, S/O.ABDUL KAREEM,
KURUMMATTUKUDIYIL HOUSE, NERIAMANGALAM.

2. SHAJI, S/O.NARAYANAN,
NEYVELIYIL HOSUE, NAMBOORIKOOPPU BHAGOM
KUTTUMANGALAM KARA, KUTTUMANGALAM VILLAGE.

3. THE NEW INDIA ASSURANCE COMPANY
LIMITED, KOTHAMANGALAM BRANCH.

4. SHAJI, S/O.MATHEW,
KURIKKOOR HOUSE, KUTHUKUZH, KOTHAMANGALAM.

5. SHAJI, S/O.KRISHNAN,
PALAMOOTIL HOUSE, THALAKODU BHAGOM, PIRAKKUNNAM KARA
NEIAMANGALAM VILLAGE.

6. THE ORIENTAL INSURANCE COMPANY LIMITED,
KOTHAMANGALAM BRANCH.

R3 BY ADV. SRI.M.RAJAGOPALAN
BY SRI.A.A.ZIYAD RAHMAN B/0
R6 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

~~~~~

M.A.C.A. No. 1278 of 2005

~~~~~

Dated, this the 30th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a road traffic accident occurred on 19.03.2000 made him to approach this Court by filing this appeal.

2. The appellant sustained injuries when he was travelling as pillion rider on the two wheeler bearing No. KL7 H 2663. While he was proceeding as above, a lorry bearing No. KBE 8415 owned by the first respondent, driven by the second respondent and insured with the 3rd respondent came from the opposite direction and hit against the motor cycle, resulting serious injuries to the appellant, which was sought to be compensated by filing claim petition before the Tribunal.

3. All the parties, except the insurance company, remained ex-parte. The 3rd Insurance Company contested the matter on general grounds of defence as to the negligence and quantum. The case was

heard along with the connected case filed by the rider of the scooter. No oral evidence was adduced. Documentary evidence consists of Exts. A1 to A11.

4. On the basis of the available materials on record, the Tribunal arrived at a finding that the accident occurred was only because of the negligence on the part of the driver of the lorry and fixed the liability accordingly. The case of the appellant was that he was a worker and was earning a monthly income of nearly Rs.4000/-. It was also contended that much disability was resulted because of the injuries, which in turn was sought to be compensated. No evidence was adduced, either oral or documentary, in support of the avocation and the extent of disability. In the said circumstances, the Tribunal reckoned Rs.1500/- p.m. as his notional income and awarded compensation accordingly under different heads.

5. The injuries noted by the Tribunal, as discernible from paragraph 18 of the Award, are in the following terms :

"..... The details of the injuries noted therein are :

- lacerated wound Rt. knee 3x2 cm. (open knee)
- lacerated wound Rt. Parietal region 5 x 3 cm.
- abraded laceration Rt. big toe.

The result of investigation shows that the petitioner has sustained haemorrhagic contusion on the frontal lobe and that he was treated as inpatient....."

The amounts awarded by the Tribunal under the relevant heads are as follows :

Loss of earning	: Rs.1,500/-
Expenses for transportation	: Rs. 200/-
Expenses on extra nourishment	: Rs.1,000/-
Expenses for treatment	: Rs.1,000/-
Pain and sufferings	: Rs.5,000/-
Loss of amenities	: Rs.3,000/-
Total	: Rs.11,700/-

6. Heard the learned counsel appearing for 3rd respondent Insurance Company and also the 6th respondent Insurance Company (insurer of the scooter).

7. The Tribunal awarded a total compensation of Rs.11,700/- and the same was directed to be satisfied with interest @ 9 % per annum from the date of application till the deposit, mulcting liability upon the 3rd respondent Insurance Company i.e. the insurer of the lorry. Since the petitioner had not remitted the requisite court fee of Rs.1373/-, the same was directed to be deducted from the

compensation awarded.

8. After hearing both the sides, this Court finds that though no specific evidence was let in from the part of the appellant/claimant as to his avocation and income, since he was an able bodied person aged at 24 years at the time of accident i.e. in the year 2000 and considering the money value and such other relevant aspects, we find it fit and proper to reckon the monthly income as Rs.3000/-. The injuries sustained by the claimant included some head injury as well, though no disability is stated as resulted or substantiated. By virtue of the said accident and injuries, it could be presumed that the appellant was not able to resume work for some period, even if he was a general worker and he has to be compensated to an extent of 4 months. Thus, the appellant is eligible to get a sum of Rs.12,000/- under the head of loss of earning. After crediting the amount already awarded under this head, the balance figure will come to **Rs.10,500/** [12000 - 1500]. The Tribunal has awarded only a sum of Rs. 5000/- towards the pain and sufferings. We find it fit and proper to enhance the same to Rs.10,000/-, thus resulting a balance of **Rs.5,000/-**. Similarly, Rs.3000/- awarded under the head of loss

of amenities should be raised by **Rs.7,000/-** more. On reworking the compensation as above, the balance compensation to be effected in respect of the injuries sustained by the appellant is **Rs.22,500/- [Rupees Twenty Two thousand and five hundred only]**, which is liable to be satisfied with interest @ 9% from 16.07.2010. We consciously deny interest till 16.07.2010, since, despite ordering notice as early as on 05.08.2005, no process charges were remitted till that date. Since the policy has been admitted by the Insurance Company, the due amount shall be deposited by the Insurance Company within one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge