

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

MACA.No. 1322 of 2005 ()

AGAINST THE AWARD IN OPMV 59/2001 of SPL.COURT FOR EC ACT CASES &
MACT,TSR DATED 16-09-2004

APPELLANT/APPELLANT:

SIVARAJ, AGED 41 YEARS,
S/O.LAKSHMAN CHETTIAR, COLONY, PATTIKAD
THRISSUR TALUK.

BY ADV. SRI.V.SANTHARAM

RESPONDENT(S):

1. MAHENDRAN, S/O.MANI,
141/1, F.S.P. COLONY, INAM KARUR
KARUR P.O., TAMILNADU-639 002.

2. MADHU BHARATHI, S/O.VENATTACHALAM,
II/16, SASTRI NAGAR, URUMANDAPLM
G N MILLS P.O., COIMBATORE -29, TAMIL NADU.

3. THE ORIENTAL INSURANCE CO.LTD.,
NO. 12-A COVAI ROAD, KARUR-639 002.

R,R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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M.A.C.A. No. 1322 of 2005

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Dated, this the 10th day of August, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant sustained serious injuries in a motor accident that occurred on 05.08.2000 involving a motorcycle owned by the first respondent, driven by the second respondent and insured with the third respondent. He has preferred a petition before the Motor Accidents Claims Tribunal, Thrissur, claiming compensation on account of the injuries sustained in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence of the second respondent and awarded a total compensation of Rs.96,800/- under various heads as follows :

Loss of earnings	:	Rs. 9,000/-
Medical expenses, Transport to hospital and expenses for bystanders	:	Rs.32,000/-
Pain and sufferings	:	Rs.12,000/-

Loss of amenities	:	Rs.10,000/-
Disfigurement	:	Rs. 5,000/-
Permanent disability	:	Rs.28,800/-

The third respondent Insurance Company was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 3rd respondent Insurance Company. Since the insurance cover for the vehicle involved in the accident remains admitted, notice to the respondents 1 and 2 is dispensed with.

3. The appellant was aged 37 at the time of accident. He was then working as a Salesman in a paper store. Soon after the accident, he was taken to a local hospital at Palakkad. Thereafter, he was taken to K.G. Hospital, Coimbatore. Later, he was brought to West Fort Hospital, Thrissur. The appellant has sustained the following injuries in the accident: (1) Abrasion wound on (L) back shoulder 5 x 7

cm. (2) Abrasion wound on (R) back shoulder 4 x 7 cm. (3) Abrasion wound on (L) loin posterior 4 x 5 cm. (4) Left elbow deformity (5) Right knee abrasion wound at posterior medial side 2 cm. x 1 cm. (6) Fracture of right 9th rib. X-ray of lumbar spine showed lumbar spondylosis and LS fracture. C.T scan showed contusion haematoma on the right temporal region and brain oedema. There was history of loss of consciousness. The appellant was drowsy also. He has undergone parietal craniotomy and evacuation under general anaesthesia. He has undergone inpatient treatment for 13 days at different hospitals apart from outpatient treatments. He has produced Ext. A15 disability certificate issued by a Consultant Neuro Surgeon attached to the Department of Neuro Sciences, West Fort Hospital, Thrissur, in which it is certified that the appellant has a permanent disability of 15%. Post traumatic syndrome, headache, giddiness, mild cognitive impairment in attention and working memory and some hearing problem are also noted. The doctor who has issued Ext. A15 was not examined in this case. The doctor who has

treated the appellant at the West Fort Hospital has noted in the Discharge Summary that at the time of discharge the appellant had no neurological defects. The facts that the appellant developed severe headache and the C.T. scan taken on 09.08.2000 showed right temporal contusion haematoma are noted in it. Craniotomy and evacuation are also noted in the Discharge Summary. The Tribunal has not accepted the permanent disability of 15% certified. The Tribunal accepted only 5% permanent disability for the purpose of awarding compensation. The view so taken by the Tribunal cannot be said to be wrong altogether. Even then, considering the head injury and other injuries sustained by the appellant, we enhance the amount of Rs.28,800/- awarded by the Tribunal as compensation for permanent disability to Rs.40,000/-. The Tribunal awarded Rs.9,000/- towards loss of earnings for a period of three months. This also requires some enhancement. On considering the nature of injuries suffered and the treatments undergone by the appellant, it is only reasonable to hold that the appellant could not have earned

any income for a period of about six months. Therefore, the amount awarded under that head is enhanced to Rs.18,000/-. Similarly, Rs. 12,000/- awarded under the head of pain and sufferings is enhanced to Rs.20,000/-. Rs.10,000/- awarded under the head of loss of amenities is also enhanced to Rs.15,000/-. Thus, the appellant is entitled to an additional amount of Rs.33,200/- (Rupees thirty three thousand and two hundred only) as compensation over and above the amount awarded by the Tribunal. The said amount of Rs.33,200/- shall carry interest @ 9 % per annum till realization, if the amount is not deposited within 30 days from the date of receipt of a copy of this judgment.

The appeal is allowed in part as above.

sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd