

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

**MACA.No. 1325 of 2005 ( )**

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AGAINST THE AWARD IN OPMV 2565/1994 of M.A.C.T., KOLLAM DATED 30-09-2002

APPELLANT(S) /APPELLANT:

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RADHAKRISHNA PILLAI.M.,  
PAZGAYAMADATHIL VEEDU, NADUVILAKKARA, THEVALAKKARA.

BY ADV. SRI.K.G.PAVITHRAN

RESPONDENT(S) :

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1. RAJAN NAIR.N.,  
PULLAMPARAYIL, OLAYIL, KOLLAM.

2. M.S.VANAJA, GEETHANJALI,  
CONTONMENT NORTH, KOLLAM.

3. UNITED INDIA INSURANCE COMPANY,  
KOLLAM.

R1 BY ADV. SRI.M.KANNAN

BY ADV. SRI.AJEESH S.BRITE

R3 BY ADV. SMT.T.C.SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION  
ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A. No. 1325 of 2005  
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Dated, this the 13<sup>th</sup> day of October, 2015

**JUDGMENT**

Ramachandra Menon, J.

Injuries sustained to the appellant, who is an employee of the Police Department, in a road traffic accident occurred on 24.12.1993 were ordered to be compensated, granting only a total sum of Rs.36,000/- with interest @ 9% p.a. from the date of petition made him feel aggrieved, thus driving him to approach this Court by way of this appeal, referring to inadequacy of the compensation.

2. On 24.12.1993, when the appellant was riding on a motorcycle bearing No. **KL4 A 8213** along with petitioner in O.P.(MV) No. 2564 of 1994 on pillion, a private bus bearing No. **KL 2 B 383** driven by the first respondent, owned by the second respondent and insured with the 3<sup>rd</sup> respondent knocked them down. It is contended that the bus which was proceeding in front of the motorcycle suddenly applied the brakes, when the motor cycle hit on the rear side of the bus, causing serious injuries to the appellant and the pillion rider,

which was sought to be compensated by filing two separate petitions.

3. Evidence adduced before the Tribunal consists of versions of the claimants as PW1 and PW2 and the documents produced as Exts. A1 to A10. The Tribunal arrived at a finding that the accident occurred was because of the negligence on the part of the driver of the bus and proceeded to work out the compensation accordingly. The learned counsel for the appellant submits that the amount awarded by the Tribunal is totally inadequate and hence the appeal.

4. The learned counsel for the Insurance Company submits that the appellant was riding the motorcycle without keeping the minimum distance, so as to avoid contingencies, if any, which might occur, while proceeding on a vehicle behind. It is contended that there was every need to have applied the sudden brakes by the vehicle in front, if the situation warranted so, such as if a child crossed the road abruptly, so as to avert the accident and to save the life of the person concerned. The minimum prudence to have ridden the motorcycle keeping adequate distance, maintaining the rules and regulations and also the norms of traffic were not adhered to by the appellant, despite the fact that he was a member

of police force. The accident was only because of the negligence on the part of the appellant, who could not control his vehicle, when the bus applied the brakes, submits the learned counsel for the Insurance Company. But the fact remains that no evidence was adduced by the respondents and hence this Court finds that the finding arrived at by the Tribunal as to the negligence is not liable to be varied.

5. Coming to the quantum of compensation, a total of Rs.35,550/- rounded as Rs.36,000/- has been awarded by the Tribunal. Under the head loss of earning, reckoning notional monthly income of Rs.1800/- and taking note of the deposition of PW1 that he could resume duty only after three months, a sum Rs.5400/- has been granted. Though the appellant claimed that he was earning Rs.2500/- p.m, no evidence was adduced in this regard. Considering the nature of injuries sustained, a further sum of **Rs.2000/-** is granted under this head. Amount of compensation awarded in respect of pain and sufferings and also towards the loss of amenities are Rs.10,000/- each. No case of disability has been pointed out and no hospitalization is revealed from the pleadings and proceedings. It is also to be borne in mind

that the accident occurred was way back in '1993'. Considering the economic condition and money value prevailing on the relevant date, we find it fit and proper to grant **Rs.5000/- each** under the above two heads and it is ordered accordingly. Considering the gravity and nature of injuries sustained, we award a sum of **Rs.10,000/-** as bystander expenses and such other incidental expenses. Thus the total additional compensation will come to **Rs.22,000/- [Rupees Twenty Two thousand only]** which is liable to be satisfied with interest @ 9% p.a.

6. It is seen that the appeal was filed with a petition to condone the delay of '731' days in filing the appeal. Notice was ordered in C.M. Appln. to condone the delay on 11.08.2005. Steps were not completed on time. As per order dated 20.11.2013 further time was granted, subject to satisfaction of Rs.500/- as cost to the Kerala State Mediation and Conciliation Centre. It was thereafter, that the delay was condoned as per order 05.10.2015, however making it clear that if any enhancement is ordered, the appellant will not be entitled to get interest for the period covered by delay. In the said circumstances, it is made clear that the appellant is not entitled to get interest for the period of delay of

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731 days. Since the policy stands admitted, the Insurance Company is directed to have the amount deposited before the Tribunal within one month.

The appeal stands disposed of accordingly.

sd/-

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

sd/-

**K. HARILAL,  
JUDGE**

kmd

/True copy/

P.A. to Judge