

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 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

MACA. No.1354 of 2005 (C)

AGAINST THE AWARD IN OPMV 207/2000 of MACT,TRIVANDRUM
DATED 27-07-2004

APPELLANT/APPLICANT:

V.BIJUKUMAR, S/O.VELAPPAN,
PERUMTHOTTATHIL MELE THATTU PUTHEN VEEDU
POOZHIKKUNNU, THRIKKANNAPURAM, VISHNU NAGAR ROAD
INDUSTRIAL ESTATE (PO), TRIVANDRUM-19.

BY ADVS. SRI.NAGARAJ NARAYANAN
SRI.N.NARAYANAN NAIR
SRI.NAIR AJAY KRISHNAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.A.G.GIRISHKUMAR

RESPONDENTS/RESPONDENTS:

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1. P.P.GEORGE, S/O.PAULOSE,
PALANATHIL HOUSE, MUVATTUPUZHA (PO), ERNAKULAM.
 2. A.BALACHANDRAN, S/O.APPU,
MUDUMPIL VEEDU, PARASSUVAIKAL, PARASALA (PO)
TRIVANDRUM DISTRICT.
 3. M/S.ORIENTAL INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, THAKARAPARAMBU JUNCTION
PAZHAVANGADI, TRIVANDRUM-23.

R1 BY ADV. SRI.M.RAMASWAMY PILLAI
R1 BY ADV. SRI.P.M.JOSEPH
R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

M. A. C. A. No.1354 of 2005

Dated this the 20th day of July, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant had sustained serious injuries in a motor accident involving a tipper lorry on 30-03-1999. The lorry was driven by the second respondent, owned by the first respondent and insured with the third respondent at the time of accident. The appellant preferred a claim petition before the Motor Accidents Claims Tribunal, Thiruvananthapuram, on account of the injuries suffered by him 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 ₹1,53,000/- under various heads as follows:

Loss of earnings	-	₹ 9,000/-
Medical and incidental expenses	-	₹ 64,000/-

Transport to hospital	-	₹ 2,000/-
Damages to clothing	-	₹ 250/-
Extra-nourishment	-	₹ 2,000/-
Bystander's expenses	-	₹ 3,000/-
Pain and suffering	-	₹ 20,000/-
Permanent disability	-	₹ 32,400/-
Loss of amenities	-	₹ 20,000/-

(Rounded to ₹1,53,000/-)

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 Insurance Company. No representation for the first respondent. Since the learned counsel appearing for the Insurance Company admitted the policy cover for the vehicle, notice to the second respondent is dispensed with.

3. The appellant had sustained type III compound

fracture of both the bones of his left leg with a wound on the fracture site. He was treated with wound debridement, external fixator and coverage of raw area with skin graft. He had undergone a total period of 43 days as inpatient treatment at different spells. He had undergone long period of treatment. Even on 06-12-2000, he was admitted to the Medical College Hospital, Thiruvananthapuram, for flap coverage etc. for the infected bone and at that time, he was discharged on 23-12-2000. He was suffering from chronic osteomyelitis with an unhealthy scar over the leg. The fracture of both the bones were found to have malunited and he had also sustained shortening of his left leg by one inch. A permanent disability of 12% has been certified by the doctor.

4. We have carefully considered the injuries suffered by the appellant, treatments undergone by him and the permanent disability being experienced by him. The Tribunal awarded ₹9,000/- towards loss of earnings for a period of six months. For that purpose, the Tribunal reckoned his monthly

income at ₹1,500/-. The appellant has produced his SSLC and substantiated the fact that he was aged 25 at the time of accident. His claim that he was working as a mason during the relevant period has not been accepted by the Tribunal for want of evidence. Therefore, the Tribunal found him to be a manual labourer and awarded the compensation. The finding entered by the Tribunal that he was a manual labourer during the relevant period does not call for interference. But, we are unable to accept the view taken by the Tribunal that he was earning only a monthly income of ₹1,500/- during that period. Therefore, based on probabilities, we fix his monthly income at ₹2,500/- for the purpose of calculating and awarding compensation. The injuries sustained and the long period of treatment warrant awarding loss of earnings for a period of ten months. Therefore, an additional amount of ₹16,000/- is allowed under that head. We enhance the amount awarded under the head of transport to hospital to ₹4,000/-. Towards extra-nourishment, the compensation of ₹2,000/- awarded is

enhanced to ₹3,000/-. Similarly, the compensation of ₹3,000/- awarded under the head of expenses for bystander is enhanced to ₹6,000/-. The Tribunal awarded ₹20,000/- towards pain and suffering. This is insufficient. On considering the serious nature of injuries suffered and the long period of inpatient as well as outpatient treatments, we enhance the compensation under this head to ₹30,000/-. The certified permanent disability of the appellant is 12%. But, the learned Tribunal fixed the permanent disability at 10%. We do not find any reason to interfere with the same. But, the Tribunal calculated compensation for permanent disability based on the income fixed at ₹1,500/-. The appropriate multiplier to be adopted in this case is 18. When the compensation for permanent disability is recalculated applying the multiplier of 18 and the enhanced monthly income of ₹2,500/-, it works out at ₹54,000/- ($₹2500 \times 12 \times 18 \times 10/100$). The learned Tribunal has awarded ₹20,000/- as compensation for loss of amenities. On considering the nature of permanent disability being experienced by the

appellant, we enhance the same to ₹30,000/-. We do not find any reason to interfere with the amounts awarded under other heads. Thus, the appellant is entitled to an additional compensation of ₹63,600/- (Rupees sixtythree thousand and six hundred only) over and above the amount awarded by the Tribunal. The said additional amount of ₹63,600/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The third respondent Insurance Company is directed to deposit the amount within two months from today.

This appeal is allowed in part as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

