

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 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

**MACA.No. 1358 of 2005 ( )**

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AGAINST THE AWARD IN OPMV 1156/1999 of M.A.C.T.,ATTINGAL DATED 19-03-2004

APPELLANT(S)/APPELLANT:

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SHIBU.S., S/O.SAINUDEEN,  
SUMI MANZIL, VALIAYAVILA KAIPPADI, VENKODE (PO)  
VIA-VATTAPPARA, TRIVANDRUM-28.

BY ADVS.SRI.NAGARAJ NARAYANAN  
SRI.NAIR AJAY KRISHNAN  
SRI.SAIJO HASSAN  
SRI.SABU SREEDHARAN  
SRI.VIMAL KUMAR.A.V.  
SRI.A.G.GIRISH KUMAR

RESPONDENT(S):

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1. SAJJAD.S., S/O.SHAHUL HAMEED,  
EDATHARA PUTHEN VEEDU, CHEKKONAM, KARAKULAM  
NEDUMANGADU, TRIVANDRUM DISTRICT.

2. M/S.UNITED INDIA INSURANCE COMPANY  
LIMITED, DIVISIONAL OFFICE, C.W.C.BUILDING  
L.M.S.COMPOUND, PALAYAM, TRIVANDRUM-33.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON  
06-10-2015, 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. 1358 of 2005

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Dated, this the 6<sup>th</sup> day of October, 2015

**JUDGMENT**

Ramachandra Menon, J.

Compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a road traffic accident quantifying the same as Rs.41,700/- directing the Insurance Company to have the same satisfied with interest @ 9 % p.a. is stated as totally inadequate and hence the appeal preferred by the claimant.

2. The accident was occurred on 09.05.1999, when the appellant was riding a motorcycle bearing No. **KL01 F 7491**. While so, when he reached the place of occurrence, a mini lorry bearing No.**KL02 A 3704** owned and driven by the first respondent and insured with the second respondent knocked him down, causing serious injuries, which in turn is sought to be compensated by filing claim petition.

3. The first respondent did not choose to contest the matter and was set ex parte. Evidence adduced before the Tribunal

consists of Exts. A1 to A13 marked on the part of the claimant and Ext. X1 case record marked, as Court exhibit. Nobody was examined on either side. On conclusion of the Trial, the Tribunal arrived at a finding that the accident was occurred because of the negligence on the part of the first respondent and fixed the liability accordingly.

4. The case of the appellant is that at the time of the accident he was a B.com student and was aged at 19 years. The injuries caused to the appellant were serious, the gravity of which was assessed by the doctor, who certified the permanent disability as 11% vide Ext. A11. But the Tribunal chose to reduce the same to 7% and worked out the compensation reckoning the notional income as Rs.15,000/- p.a. [Rs.1250/- p.m] and taking the multiplier as '16'. The amounts awarded by the Tribunal under various heads are as given below :

|                               |               |
|-------------------------------|---------------|
| Pain and sufferings           | : Rs.15,000/- |
| Transport to hospital         | : Rs.500/-    |
| Extra nourishments            | : Rs.3000/-   |
| Damage to clothing            | : Rs.500/-    |
| Hospitalisation and treatment | : Rs.3000/-   |
| As per medical bills          | : Rs.2900/-   |

|                         |               |
|-------------------------|---------------|
| Disability compensation | : Rs.16,800/- |
| (1250x12x16x7/100)      | -----         |
| Total                   | :Rs.41,700/-  |
|                         | =====         |

5. The injuries sustained by the appellant as discernible from paragraph 7 of the Award are as follows :

"..... The injuries allegedly sustained by petitioner are compound fracture left femur, lacerated injuries on the lateral aspect of left leg, and left side of face and upper part of Tibia and contusion and paid and deformity left leg. The respondent denied the injuries but no evidence is adduced. Ext. A4 wound certificate has proved the alleged lacerated injuries and fracture femur left as alleged....."

The learned counsel for the appellant submits, with reference to the assertion made in paragraph 4 of the memorandum of appeal, that the appellant was hospitalized for nearly 60 days i.e. from 09.05.1999 to 07.07.1999. It is stated that by virtue of serious injuries, much adverse circumstances have been resulted, which have not been properly assessed or analysed by the Tribunal while granting the compensation, which is sought to be enhanced by filing this appeal.

6. Despite completion of service of notice, the second respondent Insurance Company has not chosen to turn up before this Court. We have heard the learned counsel for the appellant at length and perused the available materials on record.

7. During the course of hearing, it submitted by the learned counsel that the reason stated by the Tribunal in paragraph 7 of the Award for reckoning percentage of permanent disability as '7', instead of the certified disability of 11%, is not at all correct. Though the doctor was sought to be examined by showing him as a witness in the 'witness schedule', also remitting necessary process charges, no process was issued and as such, the appellant has lost the opportunity to examine the doctor to substantiate the facts and figures.

8. After considering the nature of injuries sustained by the appellant, we find that the disability caused to the appellant, who was a student at that time, can be reckoned as 10 % to work out the compensation. Considering the age of the appellant as 19 years at the time of accident, the proper multiplier which should have been reckoned by the Tribunal is '18' and not '16'. On reworking the compensation as above, the amount payable towards

the permanent disability comes to **Rs.27,000/-** [15000 x 18 x 10/100]. The Tribunal has awarded only Rs.15000/- towards the pain and sufferings. The appellant was hospitalized for nearly 60 days and he sustained the permanent disability as discussed above. We find it fit and proper to grant **Rs.5000/-** more under this head. No amount has been awarded under the head of 'loss of amenities'. We award **Rs.25000/-** under this head. The Tribunal has not awarded any amount towards the 'bystander expenses', despite hospitalization for a period of 60days. We award a sum of **Rs.6000/-** under this head as well. Thus, the total additional compensation will come to **Rs.63,000/ [Rupees Sixty three thousand only]**. No statutory defence or violation of policy condition or statutory condition has been pointed out by the Insurance Company. Virtually, the policy stands admitted. Enhanced compensation is liable to be remitted by the Insurance Company with interest @ 9% p.a. from today. This is for the obvious reason that, though the appeal was admitted in the year 2005 and was pending before this Court for nearly 10 years, no process charges were remitted by the appellant to complete service of notice. In the said circumstances, when the matter came up for

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consideration on 20.07.2015, one more chance was given to the appellant, subject to satisfaction of Rs.500/- towards the Kerala Mediation and Conciliation Centre, also with a rider that, if any enhancement was ordered, the appellant would be entitled to get interest only from the date of such enhancement.

The appeal is allowed to the said extent.

sd/-  
**P. R. RAMACHANDRA MENON,**  
**JUDGE**

sd/-  
**K. HARILAL,**  
**JUDGE**

kmd

/True copy/

P.A. to Judge