

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

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 1365 of 2005 ()

**AGAINST THE AWARD IN OPMV 1501/1998 of ADDL.D.C. & ADDL.MACT,ALAPPUZHA.
DATED 16-10-2003**

APPELLANT(S)/APPELLANT/PETITIONER:

**JAYAKUMAR, S/O.NARAYANA PILLAI,
KARINGAM MADATHIL VEEDU, THAKAZHY PANCHAYATH-7
KARUMADY.P.O., AMBALAPPUZHA TALUK.**

**BY ADV. SRI.S.SANAL KUMAR
SRI. BHAVANA.V**

RESPONDENT(S):

- 1. RAJESH, S/O. VELU PILLAI,
SREE MANGALAM VEEDU, THAKAZHY PANCHAYATH-7
KARUMADY.P.O., AMBALAPPUZHA TALUK.**
- 2. UNNI, S/O.DAMODARA PANICKAR,
VATTACKATTU VEEDU, AMBALAPPUZHA PANCHAYATH-10
AMBALAPPUZHA.P.O.**
- 3. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, ALAPPUZHA.**

R3 BY ADV. SRI.K.SANDESH RAJA

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

M.A.C.A.No.1365 of 2005

Dated this the 21st day of July, 2015

JUDGMENT

BABU MATHEW P. JOSEPH, J.

The appellant had sustained serious injuries in a motor accident that occurred on 18.5.1998 involving a two wheeler. He had preferred a petition before the Additional Motor Accidents Claims Tribunal, Alappuzha, claiming compensation on account of the injuries sustained by him in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the rider of the two wheeler and awarded a total compensation of Rs.55,800/- under various heads. The 3rd 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 has been admitted by the 3rd respondent, notice to the respondents 1 and 2 is dispensed with.

3. The appellant had sustained type II compound fracture of both the bones of his right leg. He had also sustained abrasion on his right hand and right elbow. He was admitted to the Medical College Hospital, Alappuzha, after the accident. He had undergone

inpatient treatment for a total period of 32 days. He had continued long period of outpatient treatment. He had undergone surgeries in connection with the treatment of the injuries suffered by him. He was aged 29 at the time of accident. He was an agricultural worker during that period. He had produced a disability certificate issued by Dr.Santhosh Kumar M.N., Lecturer in Orthopaedics, Medical College Hospital, Alappuzha, in which it is certified that the appellant had sustained a permanent disability of 19.05%. The reasons for sustaining such a permanent disability have also been narrated in the disability certificate. In view of the fact that the doctor was not examined, the learned Tribunal reckoned the permanent disability of the appellant only as 10%. The learned Tribunal fixed the monthly income of the appellant notionally at Rs.1,500/- and awarded Rs.6000/- towards loss of earnings for a period of 4 months. This is insufficient. On considering the relevant matters, the income of the appellant can be fixed at Rs.2,000/- per month for the purpose of calculating compensation. He had sustained serious injuries and had undergone long period of treatment including surgeries for the delayed union of both the bones of his right leg. On considering these facts, Rs.12,000/- is allowed towards loss of earnings for a period of 6 months. The learned Tribunal awarded Rs.3,000/- towards damages to clothing, expenses for bystander, extra nourishment and transport to hospital. This is also insufficient. Therefore, we enhance the said

amount of Rs.3,000/- to Rs.8,000/-. The learned Tribunal awarded Rs.35,000/- as compensation towards disability, loss of enjoyment and amenities of life and future loss of earning power. Under the count of permanent disability alone, the appellant is entitled to more amount. We do not interfere with the finding of the learned Tribunal that the appellant had sustained a permanent disability of 10%. He was aged 29 at the time of accident. The appropriate multiplier applicable is 17. When the compensation for permanent disability is assessed applying the said multiplier, the loss of earning power as a result of permanent disability works out at Rs.40,800/- ($\text{Rs.2000} \times 12 \times 17 \times 10/100$). We allow the same. Definitely, the appellant would be experiencing considerable loss of amenities and enjoyment of life as a result of the permanent disability sustained. On account of the same, we allow an amount of Rs.15,000/-. On considering the serious nature of injuries suffered by the appellant and the nature of treatment, we are of the view that Rs.10,000/- allowed towards compensation of pain and suffering by the Tribunal is insufficient. Therefore, it is enhanced to Rs.20,000/-. Thus, the appellant is entitled to an additional compensation of Rs.41,800/- (Rupees forty one thousand and eight hundred only) over and above the compensation awarded by the Tribunal. This additional amount of Rs.41,800/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realization. The 3rd respondent Insurance Company shall 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**

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PA TO JUDGE

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