

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

MACA.No. 879 of 2012 ()

AGAINST THE AWARD IN OPMV 1879/2008 of M.A.C.T., ERNAKULAM DATED
31.08.2011

APPELLANT/PETITIONER:

PONNAPPAN.K.K. AGED 54 YEARS
S/O. KARUMBAN, KATTICHIRA VEETIL, VALLON ROAD
KADAVANTHARA, ERNAKULAM.

BY ADVS.SRI.K.JANARDHANAN
SRI.K.J.MANU RAJ

RESPONDENT(S)/RESPONDENTS :

1. ASSY
S/O. MOHAMMED, MUTHUPARAMBIL HOUSE, KOMBARA
NAD P.O., ALUVA, PIN-683 101.

2. KUNJUMOHAMMED , AGED 34 YEARS
S/O. ABDUL KHADER, KOLOTHU VEETIL
NEAR DARUSALAM MADRASSA, THEVAKKAL
THRIKKAKARA-682 028.

3. UNITED INDIA INSURANCE CO. LTD.
GOVERNMENT JUNCTION, ALUVA, PIN-683 101.

BY ADV. SMT.RAJI T.BHASKAR
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 31-08-2015, 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.879 OF 2012
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Dated this the 31st August, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

The appellant, while proceeding along the road on 08.06.2008, was knocked down by a motor cycle bearing No.KL.41A.8171 ridden by the second respondent, owned by the first respondent and insured by the third respondent/United India Insurance Co.Ltd., causing serious injuries involving fracture to the shoulder bone. This led to the claim petition filed before the Tribunal. Admittedly, no oral evidence was adduced from the part of the claimant but for marking documents as Exts.A1 to A12. The insurance policy was admitted by the third respondent/insurance company. The owner and driver of the vehicle remained ex parte. After analysis of the facts and figures, the Tribunal awarded amounts under various heads, granting a total compensation of Rs.52085/-, which was directed to be satisfied with interest at the rate of 9% per annum from the

date of filing of the petition before the Tribunal . Inadequacy of the amount awarded by the Tribunal is sought to be challenged by filing this appeal.

2. Heard the learned Counsel for the appellant as well as the learned Standing Counsel for the Insurance Company.

3. Since the only question to be considered is with regard to the sufficiency of the amount awarded and since there is no dispute with regard to insurance coverage of the vehicle involved, we do not find it necessary to issue notice to the respondents 1 and 2 and we dispense with the same .

4. Coming to the award, the Tribunal has found that the accident occurred was only because of the negligence on the part of the driver of the motor cycle and that the vehicle was having valid policy coverage, as admitted by the insurer.

5. The injuries sustained by the appellant are in the following terms:

- 1. Contusion on the left frontal lobe*
- 2. Depressed fracture right temporal bone*
- 3. Frontal and right temporal scalp haematoma*
- 4. Loss of 4 lower front teeth.*

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The appellant was hospitalised for a period of six days. Ext.A8 is the wound certificate and Ext.A9 is the discharge summary. The claim of the appellant was that he was a general worker having monthly income of nearly Rs.4000/-. Though no proof was produced to establish the same, the Tribunal reckoned the monthly income as Rs.3500/- and worked out the compensation under different heads as given below:

<i>Head</i>	<i>amount claimed</i>	<i>amount awarded</i>
<i>Loss of earning</i>	<i>10000</i>	<i>11000</i>
<i>Transportation expenses</i>	<i>3000</i>	<i>800</i>
<i>Damage to clothes</i>	<i>2000</i>	<i>400</i>
<i>Extra nourishment</i>	<i>2000</i>	<i>1000</i>
<i>Medical expenses</i>	<i>15000</i>	<i>12135</i>
<i>Attendant expenses</i>	<i>10000</i>	<i>750</i>
<i>Shock, pain and sufferings</i>	<i>20000</i>	<i>14000</i>
<i>Compensation for continuing & permanent disability</i>	<i>30000</i>	<i>0</i>
<i>Compensation for loss of earning power</i>	<i>20000</i>	<i>0</i>
<i>Loss of amenities and enjoyment in life</i>	<i>20000</i>	<i>12000</i>
<i>Total</i>	<i>132000</i>	<i>52085</i>

6. After hearing both the sides, we find that inspite of the fracture sustained by the appellant and also the loss of four lower front teeth, no compensation has been awarded by the Tribunal under this Head, either towards permanent disability or in respect of loss of teeth/replacement. Even if no certificate was produced, taking the facts and circumstances as a whole, we find that a lumpsum compensation of **Rs.25000/-** can be awarded under this head. It is ordered accordingly. We find that loss of amenities has been compensated to an extent of Rs.12000/-, which require a slight variation and we enhance the same to Rs.20000/-, resulting in a balance compensation of **Rs.8000/-** under this head. No other head does require any variation.

7. In the above circumstance, the appellant is entitled for a further sum of **Rs.33000/-** (Rupees thirty three thousand only) as balance compensation payable, which is hereby awarded. Since the policy is admitted, the said amount with interest at the rate of **9%** per annum from the date of filing of the petition

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before the Tribunal shall be deposited by the Insurance company within thirty days from the date of receipt of a copy of the judgment.

Appeal stands disposed of.

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

**K. HARILAL,
JUDGE**

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