

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

MACA.No. 948 of 2012

O.P(M.V)NO.118/2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,THODUPUZZHA

APPELLANT(S)/PETITIONER :

**SIVANKUTTY, S/O.KESAVAN,
MANNOORKULANGARA HOUSE, 12TH MILE BHAGOM,
ARAKULAM KARA AND VILLAGE, THODUPUZZHA TALUK.**

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENT(S) :

- 1. TESSIN KELAM, S/O.ABDUL KELAM,
PUZHAKKARAYIL HOUSE, WEST KODIKULAM KARA,
KODIKULAM VILLAGE, THODUPUZZHA- 685 582.**
- 2. K.K.KOCHUMUHAMMED,
HILL TOP, THAZHATHANGADY, KOTTAYAM.(DEAD)**
- 3. THE ORIENTAL INSURANCE CO.LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
KOTTAYAM BRANCH- 686 001.**
- 4. SUBAIDA, W/O.LATE K.K.KOCHUMUHAMMED,
HILL TOP, HOUSE NO.XXVII/86, THAZHATHANGADY,
POST ARUPUZZHA, KOTTAYAM DISTRICT- 686 005.**
- 5. K.K.MUHAMMED ANAS,
S/O.LATE K.K.KOCHUMUHAMMED, HILL TOP,
HOUSE NO.XXVII/86, THAZHATHANGADY,
POST ARUPUZZHA, KOTTAYAM DISTRICT- 686 005.**
- 6. K.K.MUHAMMED ANISH,
S/O.LATE K.K.KOCHUMUHAMMED, HILL TOP,
HOUSE NO.XXVII/86, THAZHATHANGADY,
POST ARUPUZZHA, KOTTAYAM DISTRICT- 686 005.**

MACA.No. 948 of 2012

7. K.K.MUHAMMED ALI,
S/O.LATE K.K.KOCHUMUHAMMED, HILL TOP,
HOUSE NO.XXVII/86, THAZHATHANGADY,
POST ARUPUZHA, KOTTAYAM DISTRICT- 686 005.

8. K.K.ANU,
S/O.LATE K.K.KOCHUMUHAMMED, HILL TOP,
HOUSE NO.XXVII/86, THAZHATHANGADY,
POST ARUPUZHA, KOTTAYAM DISTRICT- 686 005.

[ADDL. RESPONDENTS 4 TO 8 WERE IMPEADED AS PER ORDER
DATED 29.03.2008 IN I.A.NO.20 OF 2008 BUT BY INADVERTENT MISTAKE
ADDL. RESPONDENTS WERE NOT SHOWN IN THE CAUSE TITLE OF
THE AWAD.]

R3 BY ADVS. SRI.RAJESH THOMAS
SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

P.B.SURESH KUMAR, J.

M.A.C.A.No.948 OF 2012

Dated this the 23rd day of February, 2015

JUDGMENT

The claimant in an original petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted by the Tribunal.

2. The claimant is a U.D.Clerk in Government Service. The accident took place on 2.7.2005. The claimant was aged 48 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the original petition by way of compensation for the injuries sustained by the claimant. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.48,600/- by way of compensation and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. Ext.A6 is the wound certificate of the claimant. The Tribunal noticed that the claimant sustained various injuries including fracture of lateral end of left clavicle. Tribunal also noticed that the claimant underwent inpatient treatment in hospital for a total period of 12 days. Ext.A8 is the disability certificate showing disability of 10% issued by the Medical Board attached to the District Hospital, Idukki. Ext.A10 certificate issued from District Medical Store, Idukki, Muttom, indicates that the claimant was drawing a sum of Rs.7,891/- by way of his salary at the time of accident. The Tribunal, though found that the claimant is entitled to compensation for loss of earnings for a period of two months, while computing the compensation payable on that head, the Tribunal had reckoned the monthly income of the claimant only at Rs.4,000/-, holding that the claimant was on leave on medical certificate for the period from 2.7.2005 to 1.9.2005. The stand taken by the Tribunal that the claimant is not entitled to the entire compensation claimed by him for loss of earnings for the reason that he was on leave cannot be sustained. Had there not been any accident, the leave availed by him could have been utilised by him for some other ailments. As such, I am

of the view that the claimant is entitled to an additional compensation of Rs.7,782/- under the head loss of earnings. Though the claimant had undergone inpatient treatment for 12 days, the Tribunal granted only a sum of Rs.1,000/- towards bystander's expense. According to me the claimant is entitled to a further sum of Rs.1,000/- towards bystander's expense. Towards extra-nourishment, only a sum of Rs.1,000/- is seen granted by the Tribunal. According to me, the claimant is entitled to a further sum of Rs.1,000/- towards compensation for extra-nourishment. A sum of Rs.12,000/- was granted by the Tribunal as compensation towards pain and sufferings. In the nature of the injuries sustained by the claimant and the treatment undergone by him, I am of the view that the claimant is entitled to a further sum of Rs.8,000/- towards compensation for pain and sufferings. Towards loss of amenities and enjoyments in life, the Tribunal has granted only a sum of Rs.7,000/- as compensation. On an evaluation of the nature of the injuries sustained by the claimant, I am of the view that the claimant has to be granted a further sum of Rs.3,000/- towards loss of amenities and enjoyments in life.

5. No compensation has been granted by the Tribunal towards continuing permanent disability on the ground that the accident has not affected his earning capacity. Ext.A8 is the disability certificate issued by the Medical Board which certifies that the claimant is suffering from 10% disability. Merely for the reason that the disability has not affected the earning capacity of the claimant, it cannot be said that the claimant is not entitled to any compensation for continuing permanent disability. Since the disability has not affected the earning capacity of the claimant, I am of the view that the claimant has to be granted a consolidated amount of Rs.10,000/- towards compensation for continuing permanent disability. Thus, the claimant is entitled to a further sum of Rs.30,782/- towards compensation.

6. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7.5% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of

Rs.30,782/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz., 157 days as ordered in C.M.Application No.1174/12.

P.B.SURESHKUMAR, JUDGE

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