

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K. HARILAL

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

MACA.No. 1442 of 2005

AGAINST THE AWARD IN OPMV 1992/1997 of ADDL. MACT,
THALASSERY DATED 30-10-2004

APPELLANT(S)/APPELLANT:

MUHAMMED ALI.K., AGED 42 YEARS,
S/O.ABDUL RAHIMAN, ARAFA MAHAL, PURAVOOR,
P.O.KANHIRODE, KOODALI.

BY ADVS.SRI.M.SASINDRAN
SRI.SREEJITH S.NAIR

RESPONDENT(S)/RESPONDENTS:

1. K.T.DEVASSIA, S/O. THOMAS,
KAITHAKKAL HOUSE, P.O.IRITTY.

2. PUTTICHIKKANDY RAMAKRISHNAN,
S/O.KRISHNAN, PUTHIYAVALLAPIL HOUSE, ELAMPARE,
P.O.KIZHALLUR.

3. THE ORIENTAL INSURANCE CO.LTD.,
KANNUR. (COVER NOTE NO.135052).

R3 BY ADV. SRI.MATHEWS JACOB (SR.)

BY ADV. SRI.P.JACOB MATHEW

R1 BY ADV. SRI.K.V.PAVITHRAN

BY ADV. SRI.JAYANANDAN MADAYI PUTHIYAVEETIL

BY ADV. SRI.ANIL.D.KAITHAKKAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 08-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No.1442 of 2005

Dated this the 8th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

Insufficiency of the compensation awarded by the Tribunal in connection with the injuries sustained by the appellant herein in a road traffic accident is the subject matter of the appeal.

2. The accident occurred on 8/9/1996. The appellant was travelling in a jeep and because of the rash and negligent driving by the driver of the jeep, it hit against three children and thereafter, dashed against a bus shelter, causing serious injuries to the appellant which was sought to be compensated by filing the claim petition before the Tribunal.

3. The appellant contended that he was doing some business and was earning a monthly income of ₹4,000/-. The Insurance Company admitted the policy; but sought to contest the matter on general grounds. Evidence tendered before the Tribunal consists of the oral testimony of the appellant, who was examined as P.W.1 and the documentary evidence as Exts.A1 to A10 and Ext.C1 - which is a copy of the report of the Advocate Commissioner appointed by the Tribunal. The concerned Doctor of the Medical Board, who issued the disability certificate as Ext.P7, was examined as P.W.2. Based on the evidence before the Tribunal, a finding was rendered that the accident was only because of the negligence on the part of the driver of the jeep.

4. With regard to the quantum of compensation payable, the Tribunal observed that no evidence was adduced with regard to the age, occupation or income and hence only a notional amount of ₹1,500/- was fixed as the monthly income. Though the disability

certificate was to the extent of 50% vide Ext.A7, and the Doctor was examined as P.W.2, the Tribunal observed that the Doctor could not say as to the actual extent of the bodily disability when examined as such, reckoned only 5% as against the certified extent of 50%. The compensation for the disability was fixed as ₹13,500/-, adopting a multiplier of '15', based on the age of the claimant. Awarding amounts under various heads, a total compensation of ₹58,000/- was awarded and it was directed to be satisfied with interest at the rate of 9% per annum from 11/12/1997, the date of application, till satisfaction. This is sought to be enhanced as per this appeal.

5. Heard the learned counsel for the appellant and also the learned counsel appearing for the Insurance Company.

6. After going through the facts and figures, this Court finds that the injuries sustained by the appellant were serious, which involved fracture to maxilla and fracture to nasal bone, plus such other injuries,

reaching up to the skull, as noted in the wound certificate and other medical records. The appellant was also caused to be examined by the Medical Board; whereby it has been clearly certified that he was suffering from 'diplopia' and the disability was stated as 50%. The concerned Doctor/Ophthalmologist, who was a Member of the Medical Board, when examined as P.W.2, opined that she had not assessed the whole body disability and hence she was not in a position to assess the same. It was in the said circumstance that the Tribunal reckoned 5% as the disability to work out the compensation which, however, does not appear to be correct or proper, as no such expertise was there to have it reduced to such a lower extent. In view of the nature of injuries and also the available evidence brought on record, a reasonable extent ought to have been taken by the Tribunal, which we find it appropriate as 20%.

7. With regard to the monthly income, it is brought on record that the appellant/claimant was

conducting some business and he had obtained registration under the relevant provisions of the Kerala Shops and Commercial Establishments Act, right from 1992. A copy of the Registration Certificate bearing the signature and seal of the authorities of the Labour Department was produced as Ext.P10. But, observing that the same only a 'photocopy', it was simply brushed aside by the Tribunal. This Court finds that, though the same is not an original document, to prove the income of the appellant, it shows that the appellant was doing business and that as a law abiding citizen, he had taken registration as per the relevant provisions of the law. As such, we find it proper to reckon the monthly income as ₹2,500/- more so when the appellant was a person aged above 40 years, maintaining his family. On re-working the compensation towards disability, as above, the figure comes to ₹90,000/- ($2500 \times 12 \times 20/100 \times 15$) and the balance compensation comes to ₹76,500/- (₹90,000/- minus ₹13,500/-).

8. The amounts awarded by the Tribunal under other heads are as follows:

Pain and suffering	-	₹	12,000.00
Bystander's expenses	-		7,650.00
Transportation expenses	-		1,800.00
Medical expenses	-		10,500.00
Loss of earnings	-		4,500.00
Loss of amenities	-		5,000.00
Extra nourishment	-		2,550.00
Damage to clothing	-		500.00

Considering the nature and extent of injuries and hospitalisation for nearly 51 days, we find that a further sum of ₹3,000/- requires to be given towards pain and suffering. Similarly, the loss of amenities compensated by the Tribunal is much on the lower side and we award a further sum of ₹10,000/- under the said head as well. The total balance compensation payable comes to ₹89,500/- (Rupees Eighty nine thousand and five hundred only). This is to be satisfied with interest at the rate of 9% per annum.

9. However, by virtue of the lapses on the part of the appellant in remitting the necessary process charges and completing the service of notice, it was

ordered by this Court on 7/9/2015 that, if any, enhancement was ordered in the appeal, the appellant would not be entitled to get interest till the date of enhancement. As such, we make it clear that the enhanced compensation, as above, is to be satisfied with interest at the rate of 9% per annum from 'today'. It shall be satisfied by the Insurance Company within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge