

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 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

MACA.No. 955 of 2012

AGAINST THE AWARD IN OPMV 322/2009 of MACT,KALPETTA DATED
21-02-2012.

APPELLANT(S)/PETITIONER:

NIZAR C.H., AGED 25 YEARS,
S/O.MOIDU, CHATHOTH HOUSE, THARUVANA POST,
MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS/RESPONDENTS:

1. SAID,
S/O.KUNHAMMED, SAID HOUSE, VELLAMUNDA,
POST KATTAYAD,PIN-670 731,
(DRIVER OF THE JEEP NO.KL-10-C/433)
D.L.NO. NOT KNOWN).

2. A.ABDULLA,
S/O.KUNHAMMED, SAID HOUSE, VELLAMUNDA,
POST KATTAYAD,PIN-670 731,
(OWNER OF THE JEEP NO.KL-10-C/433).

3. THE NATIONAL INSURANCE COMPANY LTD.,
KALPETTA COMPLEX, KALPETTA,PIN-670 731,
(POLICY NO.570309/31/07/6700000136).

4. NOUSHAD,
S/O.AMMED, PERUNCHOLA HOUSE, VERAMBETTA,
PADINJARATHARA P.O., PIN-673N575.

R3 BY ADV. SRI.RAJAN P.KALIYATH
R2 & 4 BY ADV. SMT.CELINE JOSEPH
R3 BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 07-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A. No.955 of 2012

Dated this the 7th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in O.P.(MV) No.322/2009 is the subject matter challenge in this appeal preferred by the claimant.

2. The accident occurred on 15/10/2007 when the motorcycle bearing Registration No. KL-13D/1740 driven by the appellant herein and the jeep bearing Registration No.KL-10C/433, owned by the 2nd respondent, driven by the 4th respondent and insured by the 3rd respondent, collided together causing serious injuries which led to the claim. The driver of the jeep shown as the 1st respondent; was

subsequently struck off and the additional 4th respondent was brought in. The additional 4th respondent/driver of the jeep chose to remain ex parte. The written statement filed by the 2nd respondent/owner was only formal, to the effect that the vehicle was validly covered by an insurance policy and further that there was negligent in driving the vehicle. Similar contention was raised from the part of the Insurance Company/the 3rd respondent as well. No evidence, oral or documentary, was adduced by either side and the only evidence before the Tribunal consists of Exts.A1 to A4 and Ext.C1 disability certificate. A Doctor of the District Medical Board, Wayanad, the Orthopaedician concerned, who issued Ext.C1 certificate, was examined as C.W.1. After evaluating the materials on record, the Tribunal arrived at a finding that the accident was only due to the negligence on the part of the driver of the vehicle and the liability was fixed accordingly. After considering

the nature and extent of injuries, the Tribunal awarded amounts under various heads, granting a total compensation of ₹42,040/- which was ordered to be paid with interest at the rate of 7.5% per annum from the date of filing the claim i.e., on 07/08/2009 till the date of payment, which is under challenge in this appeal with reference to the insufficiency/adequacy of the compensation awarded by the Tribunal.

3. Heard the learned counsel for the appellant, learned counsel for the respondents 2 and 4 and also learned counsel appearing for the Insurance Company.

4. The learned counsel for the appellant points out that the appellant was only aged 22 years at the time of accident and that he was running a cassette shop and earning a monthly income of ₹5,000/-. As mentioned herein before, no evidence, oral or documentary, was adduced so as to establish the avocation and monthly income of the appellant. This being the position, considering the totality of

circumstances, the Tribunal reckoned a sum of ₹3,000/- as monthly income which cannot be held as unreasonable or improper under the circumstance. However, having come to the amounts awarded by the Tribunal, with reference to the gravity of the injuries sustained by the appellant, this Court finds that the amounts are inadequate under some of the heads. We re-produce the amounts awarded by the Tribunal as given in paragraph-19 of the award for the purpose of convenience of reference:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amount claimed (in Rupees)</i>	<i>Amount awarded (in Rupees)</i>	<i>Basis - vital details in a nutshell</i>
1	Income/notional income	₹ 5,000.00	₹ 3,000.00	3000 x 3
2	Loss of earning (Total)	₹30,000.00	₹9,000.00	Nil
3	Loss of earning (Partial)	₹15,000.00	Nil	Nil
4	Medical and Miscellaneous expenses	₹50,000.00	₹500.00	Nil
5	Future treatment	Nil	₹2,000.00	Nil
6	Bystander expenses	₹15,000.00	₹900.00	9 x 100
7	Transportation expenses	₹6,000.00	₹3,000.00	Nil
8	Extra nourishment	₹4,000.00	₹900.00	9 x100

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amount claimed (in Rupees)</i>	<i>Amount awarded (in Rupees)</i>	<i>Basis - vital details in a nutshell</i>
9	Damage to clothing etc.,	₹1,000.00	₹500.00	Nil
10	Pain and suffering	₹50,000.00	₹8,000.00	Nil
11	Loss of amenities and conveniences	Nil	₹5,000.00	Nil
12	Shortened expectation of life	₹5000.00	Nil	Nil
13	Compensation for permanent disability	₹50,000.00	₹12,240.00	$17 \times 3000 \times 2 \times 12 / 100$
14	Loss of earning power	₹30,000.00	Nil	Nil
	TOTAL	₹2,56,000/-, Limited to ₹2 lakhs	₹42,040.00	₹42,040/- along with interest at the rate of 7.5% per annum from the date of making of the claim till the date of payment

5. On going through the facts and circumstances, we find that the injuries sustained by the appellant are serious as evident from the reference made in paragraph-9 of the impugned award, which are as given below:

“1. Fracture medial posterior lateral and interior wall of the left maxillary sinus with displacement and extension of fracture into the floor of orbit.

2. Multiple fracture left zygomatic arch.

3. Fracture mandible at coronoid process extending into ramus left side.,”

6. Considering the claim preferred by the appellant in the light of the injuries and the hardship suffered, we find that the loss of earning worked out by the Tribunal restricting the same to 'three' months is inadequate and we raise it to '6 months' as a result of which, another sum of ₹9,000/- is payable under the said head. Despite the serious injuries and long treatment availed, only a sum of ₹900/- has been awarded by the Tribunal towards bystander's expenses. We find that a further sum of ₹3,000/- would be justified under this head. We grant the same. The Tribunal awarded only a sum of ₹8,000/- towards pain and suffering which is required to be enhanced to ₹25,000/- and the balance payable is ₹17,000/-. Similarly, in the case of loss of amenities,

just a meagre sum of ₹5,000/- was awarded by the Tribunal which is inadequate to an extent of deficit by ₹20,000/-, we award the same as well.

7. Coming to the extent of disability, it has been certified as 2% and in these circumstances, we have the deposition made by the Doctor who was a Member of the Board when examined as C.W.1. Considering the totality of circumstances, the nature and extent of injuries and the adverse circumstances, especially with regard to the future and such other aspects, we find that a lump sum compensation of ₹25,000/- can be reasonable in respect of disability sustained by the appellant/petitioner. We award the balance amount of ₹12,760/-, after deducting the amount of ₹12,240/- awarded by the Tribunal. Thus, a total amount of balance compensation payable comes to ₹61,760/-. It shall be satisfied with interest at the rate of 9% per annum from the date of filing the claim i.e., 07/08/2009 till the date of payment. Since the policy

is admitted, the Insurance Company is directed to deposit the amount 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