

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

MACA.No. 1668 of 2005 ()

**AGAINST THE AWARD IN OPMV 3374/1997 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL,ERNAKULAM DATED 23-05-2005**

APPELLANT(S)/APPELLANT/PETITIONER IN THE TRIBUNAL:

**SELVY ANAND W/O.ANAND,401 EDEN PARK, 20,
VITTAL MALLAYA ROAD, BANGALORE-560 001,
NOW RESIDING AT RAMESH BHAVAN, H.NO.79, GIRI NAGAR,
ELAMAKKARA VILLAGE, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.K.A.SEBASTIAN
SRI.P.A.BAHULEYAN**

RESPONDENT(S)/RESPONDENTS IN THE TRIBUNAL:

- * 1. T.S.VYTHEEWARAN, MTB ROAD,
JOURNALIST COLONY, KALASIPALAYAM, BANGALORE-560 002. (DELETED)**
- * R1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT
WIDE ORDER DATED 26.02.2015 IN I.A 736/15 IN M.A.C.A 1668/2005**
- 2. THE UNITED INDIA INSURANCE CO LTD.,
CHITHRAPUR BHAVAN, 6TH FLOOR, BANGLORE.**
- 3. THE ORIENTAL INSURANCE CO LTD.,
PALLIMUKKU, COCHIN-16.**

**R3 BY ADV. SRI.M.JACOB MURICKAN
R2 BY ADV. SRI.JOHN JOSEPH VETTIKKAD(B/O,NO MEMO)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AD

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

M.A.C.A No. 1668 of 2005

Dated this the 11th day of September, 2015

JUDGMENT

P.R.RAMACHANDRA MENON,J

Inadequacy of the compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a motor accident occurred on 17.09.1997 is the subject matter of challenge in this appeal.

2. The appellant was riding a scooter on 17.09.1997 by about 4.30 pm. She was knocked down by a mini lorry bearing registration No. KA-01/8677 from behind causing serious injuries, which led to the claim petition. The 1st respondent who was the owner of the mini lorry did not contest the matter. The 2nd respondent was the insurance company who had insured the mini lorry. No statutory defence is pointed out and objection raised from the part of the insurance company was mainly with respect to the negligence and quantum. On conclusion of the trial, based on evidence adduced as Exts.A1 to A17 from the part of the appellant and

deposition given by her as PW1, the Tribunal awarded amounts under various heads, fixing a total compensation of Rs.1,78,100/- as against the total claim of Rs.4,00,000/-. The said amount was directed to be paid with interest @ 9% per annum from the date of filing the petition, till the date of satisfaction. This is sought to be enhanced by way of the appeal.

3. Despite the completion of service of notice, the 2nd respondent insurance company did not turn up and hence the matter was adjourned yesterday, to be listed for further consideration to this date. The learned Counsel appearing for the '3rd respondent' Insurance Company would submit that the said company was the insurer of the scooter ridden by the appellant. Since the policy is admitted, we proceeded to consider the adequacy of the compensation awarded by the Tribunal with reference to the materials on record. We have perused the lower Court records as well.

4. Going by the evidence adduced, it was contented by the appellant that she was having a salary of

more than Rs.7,000/- and the relevant documents have been produced as Exts.A12 to A15. The said certificates were not accepted by the Tribunal, holding that the employment and income were not properly proved. The Tribunal reckoned only a sum of Rs.1,500/- as the notional income and proceeded to work out the compensation payable. Despite the serious injuries noted and the disability certified by the Medical Board as per Ext.A8 (as 20%), it was reduced by the Tribunal to 10% and awarded the compensation accordingly.

5. The injuries sustained by the appellant, as discussed in para 7 of the award, are as given below:

- “1.Degloving injury of the (L) heel pad extending from medial malleolus to the tip of lateral malleolus.*
- 2. contused abrasion below (R) knee.*
- 3. Injury No.1 exposes tendo achilis.*
- 4. All the avulsed tissue and skin are not viable.*
- 5. The neuro vascular bundles of toes are exposed and partially torn.”*

6. After considering the facts and circumstances and the evidence-oral and documentary, to the extent it could be reckoned, we find that the fixation of monthly income as Rs.1,500/- is abysmally on the lower side.

Considering the facts and circumstances, particularly that she was employed as a part time Lecturer earlier, though she had worked only for a period of 10 days and the subsequent placement certified by the Ext.A14 certificate (though the monthly income stated in Ext.A14 as such cannot be accepted), we find it only reasonable to double the monthly income reckoned by the Tribunal by fixing the same at Rs.3,000/-.

7. On reworking the compensation for 'loss of earning', which has necessarily to be taken for a period of 'six' months in view of the nature and extent of injuries, the appellant is entitled to get a total sum of Rs.18,000/-. After giving credit to the sum of Rs.6,000/- awarded by the Tribunal, the balance comes to Rs.12,000/- under this head. The Tribunal has awarded only Rs.15,000/- towards the loss of amenities. Serious injuries have been sustained by the appellant, as certified by the 'Medical Board' vide Ext.A8 and as discernible from Ext.A16 treatment certificate. We find fit and proper to enhance the same to Rs.25,000/-, thus resulting a balance to be

paid as Rs.10,000/-. It is ordered accordingly. With respect to the disability, the same stands certified as 20% by the duly considered Medical Board. How and why the same was sealed down by the Tribunal, limiting it to 10% is not evident from the award. We do not find any reason to have varied the extent of disability certified by the Medical Board, also considering the gravity of the injuries sustained by her as borne by the relevant records. We reckon the extent of disability as 20% itself. As such, the compensation payable for the permanent disability comes to $3000 \times 12 \times 17 \times 20 / 100 = 1,22,400/-$. The Tribunal has already awarded Rs.30,600 under this head. The balance comes to Rs.91,800/- which is ordered accordingly.

8. In total the appellant is entitled to get a sum of Rs.1,13,800/-(Rupees One lakh Thirteen thousand and eight hundred only) as the balance compensation to be satisfied under the relevant heads. No payment/enhancement is warranted under any other heads. The said amount shall be satisfied with interest at the rate of 9% per annum from the date of filing the claim petition

before the Tribunal till the date of satisfaction. Since the policy is admitted, the 2nd respondent Insurance Company is directed to effect the deposit within in one month from the date of receipt of certified copy of the judgment.

The appeal stands allowed to the said extent. Registry has directed to return the Lower Court records to the Tribunal.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
K.HARILAL,
JUDGE

//TRUE COPY//

P.A. TO JUDGE

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