IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

MACA.No. 1687 of 2006

AGAINST THE AWARD IN OPMV 2628/1997 of M.A.C.T., ERNAKULAM DATED 09-12-2005

APPELLANT(S)/APPELLANT/PETITIONER:

MRS.LISSY FABER,
W/O.ROQUESON FABER, FAVER VILLA,
ST.JOSEPH'S CHURCH ROAD, THEVARA P.O., COCHIN 13.

BY ADVS.SRI.GEORGE THOMAS (MEVADA)
SRI.RAYNOLD FERNANDEZ
SMT.VIDYA GOPINATH

RESPONDENT(S)/RESPONDENTS:
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1. SAJEEV E.S., S/O. SREEDHARAN,
AGE NOT KNOWN, EMPLOYED IN I.N.S.VENDURUTHY,
RESIDING AT KANNOTH HOUSE, PERUMANOOR,
ERNAKULAM DISTRICT.

2. UNITED INDIA INSURANCE CO.LTD.,
HOSPITAL ROAD, ERNAKULAM.

3. MR.G.BALASUBRAMANIAN, S/O.O.GOPALAN,
VADAKKEKKARA HOUSE, CHIYYARAM P.O., THRISSUR.

4. MR.RACQUESON FABER, S/O.STANLY VINCENT,
FABER VILLA, ST.JOSEPHS CHURCH ROAD, THEVARA.

5. UNITED INDIA INSURANCE CO.LTD.,
HOSPITAL ROAD, ERNAKULAM.

R,R2 & R5 BY ADV. SRI.S.MAMMU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A. No.1687 of 2006

Dated this the 8th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The in adequacy of the compensation awarded by the Tribunal in respect of injuries sustained by the appellant herein in a road traffic accident occurred on 1/6/1997 is sought to be challenged in this appeal preferred by the claimant/injured.

2. The case projected before the Tribunal was that the appellant was travelling as a pillion rider on a motorcycle ridden by her husband on 1/6/1997 and when the motorcycle reached the place of occurrence, by about 6.45 p.m., the scooter bearing Registration No.KL-7/M-9436 ridden by the 1st respondent, owned by the 3rd respondent and insured by the 2nd

respondent, came and hit against the motorcycle , knocking the appellant down and causing serious injuries which, in turn, resulted in seeking compensation by filing the claim petition before the Tribunal.

3. The 1st respondent did not choose to contest the matter. Same is the position with regard to the 3rd respondent.

4. The Insurance Company sought to contest the matter stating that the alleged consequences suffered by the appellant/claimant were not at all proved, also disputing the rashness and negligence attributed on the part of the rider of the scooter. However, conceding the existence of the valid policy, it was also pointed out before the Tribunal that the claimant, after the accident, had sustained yet another serious accident and the injuries therein were adequately compensated. The adverse consequences resulted in the accident involved in the present case are stated as

minimal and the rest is only by virtue of the subsequent event, as evident from the materials on record.

5. The appellant/claimant was examined as P.W.1. The documents produced before the Tribunal consists of Exts.A1 to A21. After culmination of the trial, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the scooter and the liability was fixed accordingly. Considering the extent of injuries sustained by the appellant, amounts were awarded under various heads. The Tribunal granted a total compensation of ₹1,50,000/- which was directed to be satisfied with interest at the rate of 7.5% per annum, mulcting the liability upon the shoulders of the Insurance Company, in view of the admission of the policy. Insufficiency of the compensation awarded by the Tribunal and the reduction of the extent of disability to 10%, instead of the disability certified to

be 22%, as evidenced Ext.A13 certificate issued by Medical Board, made the appellant feel aggrieved and hence this appeal.

6. Heard Mr. George Thomas Mevada, the learned senior counsel for the appellant and the learned counsel appearing for the Insurance Company at length.

7. The injuries sustained by the appellant as discussed by the Tribunal in paragraph-8 of the impugned award are in the following terms:

> “1. Abrasion over ® side of face.
>
> 2. Admitted on the Department of Neuro Surgery revealed (L) frontal contusion.
>
> 3. Craniotomy and hamatoma evacuation done under G.A1.
>
> C.T. Scan Brain -
>
> Hemorrhagic contusion with cerebral hemorrhage 3 cms.

diameter in (L) frontal region.

Sub arachnoid hemorrhage in (L) fronte parietal region.

Thin SDH Centorium and posterior inter hemispheric fissure on (L) side.

Linear fracture (undepressed) occipital bone on (R) side with overlying soft tissue swelling.”

The amounts awarded by the Tribunal under the relevant heads as given in paragraph-10 are as follows:

1. Transportation to Hospital	-	₹ 1,500.00
2. Damage to clothings	-	500.00
3. Extra Nourishment	-	1,500.00
4. Attendant Expenses	-	1,500.00
5. Treatment Expenses	-	58,000.00
6. Loss of earnings	-	6,000.00
7. Pain and suffering	-	30,000.00

8. Loss of amenities	-	15,000.00
9. Loss of earning power	-	36,000.00
Total	-	₹1,50,000.00

8. The main dispute is with regard to the reckoning of the monthly income of the appellant at ₹2,000/-, in spite of adducing/producing the evidence to the effect that she was having employment with a certified salary of ₹2,800/- per month. The other dispute is with regard to the extent of disability certified by the Medical Board as 22% vide Ext.A13 Certificate, which was reduced and reckoned only as 10% by the Tribunal.

9. Coming to the monthly salary reckoned by the Tribunal, the specific case of the appellant was that she was employed in Medi Lab, Doraswamy Iyer Road, Ernakulam, and the salary was certified by the employer as per Ext.A9, to the effect that she was drawing a monthly salary of ₹2,800/-. The appellant

produced some certificates in support of her qualification to hold the post and the same were marked by the Tribunal as Exts.A20 and 21. The appellant herself mounted the box and adduced evidence as P.W.1. Still, the Tribunal reckoned only a sum of ₹2,000/- as her monthly salary, holding that the authority who issued the salary certificaste was not examined. We find that the course adopted by the Tribunal is not correct or proper, in so far as nothing was elicited from the part of the appellant/claimant when she was subjected to cross-examination. So also, no evidence was adduced from the part of the respondents with reference to the materials on record. It is true that the accident occurred about two decades back on 1/6/1997; but in so far as the appellant was working as a Laboratory Technician on the basis of her qualifications and in view of the certified salary as on the date of occurrence of the accident (as ₹2,800/-) and also considering the future prospects involved, we find it fit and proper to reckon the monthly salary of the appellant as ₹3,000/- in the place of ₹2,000/- reckoned by the Tribunal. It is also brought to the notice of this Court by the learned counsel appearing for the appellant that the appellant was aged 28 years and as proper multiplier was to be taken. We find that the appropriate multiplier which can be reckoned in the case of the appellant, considering the facts and circumstances, as a whole, is '18' and we adopt the same accordingly.

10. On re-working the compensation as above, the amounts awarded by the Tribunal under some heads appear to be on the lower side and they have to be scaled up. The loss of earnings awarded by the Tribunal in respect of the injuries sustained by the appellant for a period of three 'months' is quite inadequate and we hold that it should have been reckoned as 'six' months. This means, the amount payable under the head of loss of earning as 3000 x 6

=18000, minus 6000=12000/-. Amount awarded towards pain and suffering appears to be reasonable which does not require any variation; but the adverse consequences resulted because of the serious injuries have been compensated by the Tribunal by granting a sum of ₹15,000/- towards loss of amenities. We find that it should have been ₹25,000/- and hence we enhance the same to the said extent; thus resulting in a balance of ₹10,000/-.

11. The next question is regarding disability. It is true that the certified disability as given by the Medical Board evidenced by Ext.A13 is 22%. But it has been established by the Insurance Company before the Tribunal that the claimant had sustained a subsequent injury in a motor accident in the year 1999 and that she has been adequately compensated in that regard. This aspect was noted by the Tribunal with reference to the entries in Ext.A13 certificate, wherein it was clearly mentioned that no treatment

was availed by the claimant for a period of 'two years' before re-starting the medicines, after the occurrence of the second accident. This suggests that the injuries suffered in the earlier accident were got over, pursuant to the treatment availed earlier and there was no need or necessity to avail further treatment at least for a period of two years and the necessity arose only after the second accident. It was in the said circumstance, that the Tribunal adopted/reckoned only 10% disability so as to work out the compensation payable under the head of disability. This Court does not find anything arbitrary, illegal, improper or irregular in the course adopted by the Tribunal in this regard.

12. That apart, the case was pending before the Tribunal for nearly one decade. The appellant/ claimant has not produced any additional evidence with reference to the subsequent accident before the Tribunal; so as to effect proper segregation, if the case

is something else. Nothing is produced with reference to the subsequent accident of the year 1999 and the extent of injuries sustained by the appellant, the disability, if any, the compensation awarded by the Tribunal in respect of that accident and such other aspects, despite the fact that the appellant was having enough opportunity by invoking the power under Order XLI Rule 27 of the Code of Civil Procedure. Since such a course has not been followed, this Court does not find it fit or proper to deviate from the finding arrived at by the Tribunal, whereby the disability has been limited to 10%. However, on re-working the compensation payable, based on the enhanced salary (from ₹2,000/- to ₹3,000/-) the amount payable under the said head comes to 3000x12x10/100x18=64,800/-. After deducting the sum of ₹36,000/- already awarded by the Tribunal, the balance amount comes to ₹28,800/-.

10. In the above circumstances, the total balance

compensation payable in respect of the injuries sustained by the appellant/claimant comes to ₹50,800/-. 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 deposit. Since the policy is admitted, this Court finds that the amount shall be deposited by the Insurance Company before the Tribunal 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