

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 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 1758 of 2005 ()

(AGAINST THE AWARD IN OPMV 902/1999 of ADDL.D.C. &
ADDL.MACT, THALASSERY DATED 29.01.2005)

APPELLANT/PETITIONER

SAEED.K., S/O.P.V.ABDULLA HAJEE,
AGED 23 YEARS, MURINGODY, P.O.PERUMPUNNA
PERAVOOR, KANNUR DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.M.B.PRAJITH

RESPONDENTS/RESPONDENTS:

1. P.T.JOY, S/O.THOMAS,
PAYAMPATTIL HOUSE, P.O.KEEZHPALLI, IRIITI
(OWNER OF JEEP).

2. JOHN EDATHAZHA, S/O.JOHN,
AGED 44 YEARS, EDATHAZHA HOUSE, P.O.MANATHANA
PERAVOOR, (DRIVER).

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
KANNUR (POLICY NO. 31760803 57080).

R3 BY ADV. SRI.JOY GEORGE
R3 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A.No.1758 OF 2005
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Dated this the 29th September, 2015

J U D G M E N T

K. Harilal, J:

The appellant is the claim petitioner in O.P.(MV) No. 902 of 1999 on the file of the Addl. M.A.C.T (Addl. District Judge), Thalassery. The above claim petition was filed under Section 166 of the M.V. Act claiming compensation for the injuries suffered by him in a road traffic accident. According to the appellant, on 04.11.1997 at about 6.15 p.m., while he was travelling as a pillion rider on the bicycle peddled by one Muhammed Hashim from Muringodi to Peravoor, a jeep bearing registration No.KL.13B/2172 driven by the second respondent came in a rash and negligent manner hit him and consequently, he fell down and sustained serious injuries. The appellant was

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aged 17 at the time of the accident. Immediately, after the accident, he was taken to the hospital and treated there as an inpatient for 31 days. The said jeep was owned by the first respondent and insured with the third respondent. The accident was caused by the rash and negligent driving of the second respondent and thereby the respondents are jointly and severally liable to pay compensation to the appellant for the injuries suffered by him. He claimed an amount of Rs.5 lakhs as compensation.

2. The respondents 1 and 2 filed written statement. Though the policy coverage was admitted, the alleged negligence on the part of the second respondent was disputed. The nature of injuries sustained and expenses incurred for the treatment are also disputed. The sum and substance of the contentions taken in the written statement is that the amount claimed under various heads are exorbitant and without any basis. The appellant and the doctor who treated him were examined as P.W.1 and P.W.2 and Exts.A1 to A10 were marked from the

part of the appellant. After considering the evidence on record, the Tribunal passed the impugned award granting an amount of Rs.86900/- with interest at the rate of 9% per annum from 30.06.1999 , the date of application till the date of realisation . The quantum of compensation determined by the Tribunal is under challenge mainly on the ground that the amounts granted under various heads are inadequate and disproportionate with the severity of injuries and loss suffered by him.

3. Heard the learned Counsel for the appellant. The learned Counsel for the appellant advanced arguments mainly contending that the Tribunal went wrong by discarding the percentage of disability determined by the Medical Board vide Ext.A8 disability certificate. It is contended that the Tribunal reduced the percentage from '50% to 5 %' without any basis and that the quantum of compensation determined under the heads- pain and suffering and loss of amenities are also very low and disproportionate with the pain and discomfort suffered by him.

4. Since policy coverage was admitted by the third

respondent, notice to other respondents was dispensed with. In the absence of any representation from the third respondent, this Court issued direction to show the name of the Standing Counsel for the third respondent in the cause list and even though the name was shown in the cause list, there is no representation for the third respondent. In the said circumstance, we are inclined to dispose of the appeal after hearing the learned Counsel for the petitioner on merits.

5. Going by the impugned award, it is seen that the appellant has suffered severe injuries, which are specifically shown in Ext.A3 wound certificate and Ext.A4 discharge summary. The injuries sustained by him , as recorded in Ext.A3 are given below:

“Scalp haematoma over the left parietal region of skull, 5 x 5 cm, swelling and contusion over the right shoulder, swelling over the right forearm, swelling over the right hand, fracture of head of the right humerus and the 2nd metacarpel, neck of the 3rd metacarpel, right forearm and right wrist.”

Appellant underwent treatment in the hospital as an inpatient for

31 days. The Tribunal observed that in view of the evidence given by P.W.2 doctor, 12 weeks' rest was required for the reunion of the fractured bones. It shows that the injuries suffered by the appellant were grievous in nature. The duration of the long period in which he was hospitalised as an inpatient also would support the above observation. But, as rightly pointed out by the learned Counsel for the petitioner, the Tribunal reduced the percentage of disability from 50% to 5% without any basis. The Tribunal itself observed that if effective treatment was given, the disability could have been reduced. But, there is no evidence to show that any effective treatment was given to him, as observed by the Tribunal. So we find that the Tribunal cannot be justified in reducing the percentage of disability from 50 to 5. Taking a pragmatic and reasonable approach, in view of severity of the injuries shown in Ext.A3 wound certificate and Ext.A8 discharge certificate, we deem it fit and proper to assess the disability at 25%. But, in the absence of any evidence to show that the appellant was employed at the time of the accident, the

Tribunal is justified in taking Rs.1500/- as notional monthly income.

6. Having regard to the severity of the injuries, we find that the amount granted under the head 'pain and suffering' is inadequate and the same deserves to be enhanced to Rs.20000/-. After giving credit to the amount already awarded by the Tribunal (Rs.16000/-), the appellant is entitled to get **Rs.4000/-** under the above head. Reckoning the disability at 25%, the appellant is entitled to get a total compensation of Rs.76500/- and after giving credit to the amount awarded by the Tribunal, he is entitled to get **Rs.61200/-** more. For the same reasoning, we further find that the amount granted under the head - loss of amenities is also inadequate and that the same will stand enhanced to Rs.20000/-. After giving credit to the amount granted by the Tribunal, the appellant is entitled to get **Rs.10000/-** more. Thus, the claimant/appellant is entitled to get an additional compensation of **Rs.75200/-**-(Rupees seventy five thousand and two hundred only) with interest at the rate of

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9% per annum from the date of filing the petition till realisation.

The third respondent/Insurance Company is directed to deposit the amount within a period of one month.

The appeal stands disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**

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