

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

MACA.No.1935 of 2005 (D)

AGAINST THE AWARD IN OPMV 218/2003 of M.A.C.T. TIRUR DATED 07-09-2005

APPELLANT/PETITIONER:

POOTHAMKUTTI RAJAN, S/O.KUNHUNNY,
AGED 22 YEARS, KOTTASSERI COLONY, MEDIYIRUPPU,
P.O.CHIRAYIL, ERNAD TALUK.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS : RESPONDENTS :-

- | | | |
|---|--|---------|
| * | 1. P.MANZOOR PAZHUTHEENA PARAMBILTHODY HOUSE,
PAZHAYOOR P.O., MALAPPURAM DISTRICT. | DELETED |
| | 2. NEELAKANDAN P., S/O.KEERUTTY P.,
DEVATHIYAIL, PARAMBA HOUSE, P.O.THENHIPALAM. | |
| | 3. THE ORIENTAL INSURANCE CO LTD.,
DIVISIONAL OFFICE, PRAMOD BUILDINGS, 2ND FLOOR,
CHERUTTY ROAD, CALICUT. | |

* RESPONDENT No.1 IS DELETED FROM PARTY ARRAY AT THE RISK OF APPELLANT
AS PER ORDER DTD.11.9.2015 IN I.A.2805/2010 IN MACA.No.1935/05.

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.1935 of 2005

Dated this the 4th day of November, 2015

JUDGMENT

Ramachandra Menon, J.

Correctness and sustainability of the award passed by the Tribunal fixing the total compensation at a lower rate is the subject matter of challenge in this appeal preferred by the claimant.

2. The accident was occurred on 19.11.2001, when the appellant stated as working as a head load worker was unloading granite stone from the lorry bearing registration No.KL-11A/6381 owned by the 1st respondent, driven by the 2nd respondent and insured by the 3rd respondent. While so, according to the appellant, the 2nd respondent driver of the vehicle without any care and caution suddenly took the vehicle on the reverse gear, as a result of which the appellant fell down and a granite boulder fell upon his right leg causing serious injuries. This was sought to be

compensated by filing a claim before the Tribunal. The 1st respondent owner of the vehicle did not choose to contest the matter and was set exparte. The 2nd respondent driver filed a written statement stating that there was no negligence on his part, that the claimant slipped and fell down due to fault on his part and that there was valid insurance coverage. The insurance company sought to contest the matter on general grounds.

3. Evidence consists of oral testimony of the appellant given as PW.1 and documents produced as Exts.A1 to A11. On conclusion 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 lorry and that the concerned respondents were liable to compensate for the loss. It was accordingly that amounts were awarded under different heads granting a total compensation of ₹48,600/-, which was directed to be satisfied with interest at

the rate of 6% per annum, which in turn is under challenge at the instance of the claimant.

4. Heard the learned counsel for the appellant as well as the learned counsel appearing for the insurance company.

5. The learned counsel for the appellant submits that the disability was certified as 10% as per Ext.A7 which was not accepted by the Tribunal for no reason at all. We have gone through the award and the materials on record in detail. It is seen that the injury sustained by the appellant was mainly with regard to the cut of post-tibial artery which led to hospitalization for a spell of nearly 45 days from 19.11.2001 to 12.1.2002. The learned counsel for the appellant submits that because of the nature of the injury the appellant was not in a position to resume work for a period of nearly six months from 19.11.2001 to 19.5.2002. The suffering and ordeal undergone by the appellant has not

been adequately taken care of by the Tribunal and is under challenge.

6. After hearing both the sides and considering the nature and gravity of the injury sustained, along with the extent of hospitalization, we find that the version of the appellant that he could not resume the work for a period of six months could be accepted. In such circumstances, we fix the loss of earning for six months as ₹18,000/- and after giving credit to the sum of ₹12,000/- awarded by the Tribunal the balance under this head will be **₹6,000/-**. The Tribunal cannot be blamed for not accepting the extent of disability, as no other injury was sought to be relied on but for the 'cut of the artery', which was clinically corrected. The Tribunal has awarded compensation for pain and suffering as well as for loss of amenities. But considering the figures awarded by the Tribunal, we find that both the heads are inadequately compensated and they require modification at

our hands. We find it fit and proper to enhance the compensation for 'pain and suffering' by a further sum of **₹10,000/-** and loss of amenities by another extent of **₹15,000/-**. Thus the total balance compensation payable to the appellant in respect of the injury sustained in the accident occurred on 19.11.2001 will be ₹31,000/-, which is to be satisfied with interest @ 9% per annum from the date of petition till the realization. Since the policy stands admitted, we direct the insurance company to deposit the said amount within one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj