

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 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

MACA.No. 1937 of 2005 ()

AGAINST THE AWARD IN OPMV 218/1996 of M.A.C.T., KOLLAM DATED 14-02-2003

APPELLANT (S) / APPELLANT / PETITIONER:

S.SHAJAHAN, THENGUVILA VEEDU,
NETTAYAM VELAMANNOOR, PARIPPALLY.

BY ADVS.SRI.B.S.SURESH (CHIRAKKARA)
SMT.ANJU VIJAYAN

RESPONDENT (S) :

* 1. ASHOKAN.C., ATTUMPURAM COLONY,
KOTTAPPURAM, S.PARAVOOR P.O., KOLLAM DIST.
(Respondent No.1 is deleted from the party array at the risk
of the appellant as per order dated 25.11.2013 in I.A. No.
3105 of 2013 in MACA No. 1937/2005)

2. SUNIL KUMAR.R., SUNIL NIVAS,
KOCHALUMMOODU, PARAVOOR, KOLLAM DIST.

3. DIVISIONAL MANAGER,
DIVISIONAL OFFICE, NATIONAL INSURANCE CO. LTD.
KOLLAM.

R,R3 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 15-09-2015, 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. 1937 of 2005

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Dated, this the 15th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The Award passed by the Tribunal, granting only a compensation of Rs.5700/- with interest @ 9% p.a. from 08.02.96 in respect of the injuries sustained by the appellant is sought to be enhanced by filing this appeal.

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

3. The first respondent stands deleted from the party array as per the order dated 25.11.2013 in I.A. No. 3105 of 2013. Since the policy stands admitted, this Court does not find it necessary to issue further notice to other respondents, more so when the delay in filing the appeal was condoned after completing service of notice to the concerned respondents.

4. The accident was occurred on 14.05.1995, when the appellant, who was walking along the road, was knocked down by an

autorikshaw bearing No. KL 2B 7326, owned by the first respondent, driven by the second respondent and insured with the 3rd respondent herein. Because of the injuries sustained, he was taken to Holy Cross Hospital, Kottiyam, from where he was referred to Medical College Hospital, Thiruvananthapuram and was treated as inpatient till 17.05.1995. Then he was discharged on his own request and got admitted to an Ayurvedic Hospital by name Bhavanai Nursing Home on 17.05.1995 and discharged on 11.06.1995. The claim of the appellant was that he was a rubber planter and was having a monthly income of nearly Rs.7000/-. The first and second respondents before the Tribunal chose to remain absent and they were declared as ex-parte. No violation of statutory conditions or policy conditions is brought about and the claim was resisted by the Insurance Company only disputing the alleged rashness and negligence on the part of the second respondent.

5. The evidence before the Tribunal consists of oral evidence of PW1 (claimant) and PW2 (doctor) and documentary evidence of Exts. A1 to A11, besides Exts. X1 to X3. No evidence was adduced from the part of the respondents. On conclusion of the Trial, the Tribunal arrived at a finding that the accident was

occurred only because of the rash and negligent driving of the driver and fixed the liability accordingly. The version of the claimant as to his monthly income; the extent of injuries and alleged consequences resulted were not accepted by the Tribunal; except to the extent as covered by the documents/records issued by the Medical College Hospital. The Tribunal also observed that as per the certificate issued by the Medical College Hospital, Thiruvananthapuram vide Ext. X1, it was mentioned therein that the patient was suffering from high frequency hearing loss and that the same was not attributable to trauma. Ext. X2 case sheet issued by the Bhavani Ayurvedic Hosptial, wherein the appellant was hospitalised for ayurvedic treatment, is to the effect that the claimant had a history of diminishing eye sight and this being the position, it was held as not liable to be connected to the accident as the cause, for having not resulted in any adverse consequences.

6. But for the version of the appellant as to the projected income, no material was produced to substantiate his monthly income. Considering the fact that the accident was occurred in May 1995 and also as to the course to be pursued in such a situation, with reference to the mandate of the Statute w.e.f. 14.11.1994 bringing in Section 163 A and the second schedule stipulating the

annual income as Rs.15000/- per year, this Court finds that annual income fixed by the Tribunal as Rs.1500/- p.m. does not require any modification. But the fact remains that no amounts were awarded by the Tribunal for the 'loss of amenities'. Amounts awarded under some other heads appear to be on the lower side. Admittedly there was no fracture. The injuries reflected from the medical records produced, have been discussed in paragraph 9 of the Award. The amounts awarded under different heads, as revealed from the same paragraph of the Award, are as follows:

"Therefore, an amount of Rs. 500/- is awarded as compensation towards loss of earning, Rs.500/- towards transportation expenses, Rs.500/- towards medical expenses and Rs.200/- towards bystander expenses. As per Ext. A5 and A6, PW1 had sustained abrasions on forehead, elbow, knee, base of toe middle finger of left hand and also contusion on the frontal scalp. Therefore, an amount of Rs.4000/- is awarded as compensation towards pain and suffering. Since the loss of eye sight was mentioned in Ext. X2 as a previous illness and the hearing loss as one not related to the injuries in the RTA. I am not inclined to grant any compensation for these disabilities. Therefore, I am not inclined to award any compensation under the heads of disability and loss of earning power. Therefore, a

total sum of Rs.5700/- (Rupees Five thousand and Seven hundred only) is awarded as compensation to the petitioner."

7. After hearing both the sides, this Court finds that hospitalization of the petitioner in a private Ayurvedic Nursing Home immediately after the discharge from the Medical College Hospital stands substantiated by the oral evidence of PW1 and PW2, supported by the documentary evidence. Virtually he was not in position to do work from the date of accident till the date of discharge on 11.06.1995. It can be reasonably presumed that he would have had to deploy the service of a bystander. After giving credit to Rs.200/- already awarded by the Tribunal under the head bystander expense, we find it fit and proper to grant **Rs.1300/-** more under this head. The Tribunal only granted Rs. 500/- towards the loss of earnings. We find it necessary to enhance the same and a further sum of **Rs.1000/-** is granted under this head. Similarly, the Tribunal has granted only Rs.500/- under the head of transportation expenses. Considering the treatments availed by the petitioner at different hospitals viz. Holy Cross Hospital, Kottiyam; Medical College Hospital, Thiruvananthapuram and Bhavani Ayurvedic Nursing Home, we grant a further sum of

Rs.1000/- under this head. Since no amount has been awarded by the Tribunal towards the loss of amenities, we find it fit and proper to grant **Rs.5000/-** under this head. A notional sum of **Rs.1700/-** is awarded towards the extra nourishment charges and for inadequacy, if any, with regard to the medical expenses incurred. Thus total additional compensation will come to **Rs.10,000/- (Rupees Ten thousand only)**, which shall be satisfied with interest at the rate awarded by the Tribunal from the date of the claim petition. It is made clear that the appellant will not be entitled to get the interest for '297' days of delay, which was condoned as per the order dated 25.11.2013. Since the policy has been admitted by the Insurance Company, the due amount shall be deposited by the Insurance Company 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/-
K. HARILAL,
JUDGE

kmd