

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MACA.No. 1943 of 2005 ()

AGAINST THE AWARD IN OPMV 194/2001 of M.A.C.T., MANJERI DATED 17-12-2004

APPELLANT/PETITIONER::

SAJI M.PETER @ SHAJI
S/O. M.A. PETER, MUTTATHARA HOUSE, P.O.ERUMAMUNDA
KURUMBALANGODE VILLAGE, NILAMBUR TALUK
MALAPPURAM DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENTS/RESPONDENTS::

1. K.A.MUHAMMED ZAINUL ABIDEEN
S/O. MOHAMMED BAVA, RANGER IN FOREST DEPARTMENT
CHELAKKAD P.O., PULAMANTHOLE (VIA), PERINTALMANNA
MALAPPURAM DISTRICT. (DRIVER).
2. CHIEF CONSERVATOR OF FOREST(DEVELOPMENT)
VAZHUTHAKKAD P.O., THIRUVANANTHAPURAM DISTRICT.
(OWNER).
3. UNITED INDIA INSURANCE CO. LTD.,
NILAMBUR P.O., MALAPPURAM DISTRICT.

R3 BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

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

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

M.A.C.A.No.1943 OF 2005

DATED THIS THE 9th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the injuries sustained by the appellant made him feel aggrieved, who in turn has approached this Court by filing this appeal.

2. The accident occurred on 19.9.2000. The appellant was riding a motor cycle and when he reached the place of occurrence, a jeep driven by the 1st respondent, owned by the 2nd respondent and insured by the 3rd respondent knocked him down causing serious injuries. This was sought to be compensated by filing claim petition before the Tribunal.

3. Evidence adduced before the Tribunal consists of the oral testimony of the appellant/claimant as PW1 and Exts.A1 to A9. Disability was assessed by the medical Board to an extent of 3% as certified in Ext.X1. No evidence was adduced from the part of the respondents. No statutory defence is seen raised from the part of the Insurance Company. After analysing the evidence on record, the

Tribunal arrived at a finding that the accident was only due to the negligent driving of the jeep by the 1st respondent. Coming to the quantum of compensation, it was observed that the appellant was aged 35 years. The notional income of the appellant was taken as ₹15,000/- p.a. and reckoning the certified disability to 3%, the compensation for disability was worked out at ₹7,650/-. Granting amounts under other heads, a total sum of ₹63,250/- was awarded, which was directed to be satisfied with interest at the rate of 6% per annum and cost of ₹1,500/-. The liability was mulcted on the shoulders of the Insurance Company. This is sought to be enhanced in this appeal.

4. Heard the learned counsel appearing for the Insurance Company as well.

5. The Tribunal has reckoned only a notional sum of ₹15,000/- as the annual income. The appellant/claimant was stated as running a Travel Agency and has given evidence as PW1. Considering the facts and circumstances including that the accident occurred was in the year 2000, and the economic conditions prevailing as on that date, we find it appropriate to reckon the monthly salary as ₹2,500/.

6. The amounts awarded by the Tribunal under different heads are as given below:

Transport to hospital	:	₹ 500.00
Extra nourishment and bystanders expenses	:	₹ 3,600.00
Medical expenses	:	₹ 39,480.00
Pain and suffering	:	₹ 12,000.00
Disability $\frac{(15000 \times 3 \times 17)}{100}$	:	₹ 7,650.00

Total	:	₹ 63,230.00
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On reworking the compensation for disability based on the refixed monthly income, we find that an additional sum of **₹7,650/-** is liable to be paid under this head alone, adopting the multiplier of 16, based on his age.

7. The injuries sustained by the appellant are as given below:

- (i) Contusion with abrasion over left frontal region
- (ii) Lacerated wound right heel
- (iii) Epistaxis
- (iv) Abrasion right thigh
- (v) Cerebral concussion
- (vi) Superficial injury on scalp
- (vii) Compound fracture m/3 Tibia
- (viii) Type III segmental compound fracture right fibula

- (ix) evulsion of heel flap (R)
- (x) Calcaneum fracture (R)
- (xi) Displaced fracture 1st epicondyle and other bodily injuries.

It is seen that the appellant has sustained serious injuries and was hospitalised for a period of 24 days. No amount has been awarded by the Tribunal towards bystander's expenses and we find it appropriate to fix a sum of **₹2,000/-** under this head. Towards pain and suffering, the compensation awarded by the Tribunal is on the lower side. We enhance the same as 20,000/-, thus entitling him to get an additional amount of **₹8,000** under the head pain and suffering. Similarly, no amount has been awarded towards loss of earning. By virtue of the nature of injuries sustained including head injury, we find that the appellant would not have been in a position to resume duty at least for a period of three months and we award a compensation of **₹7,500/-** (i.e., 2,500x3) towards loss of earning. No amount has been awarded by the Tribunal towards loss of clothing. We award a sum of **₹500/-** under this head. It is equally important to note that no amount has been awarded towards loss of amenities. We find it appropriate to grant a sum of **₹20,000/-**

under this head. The total balance compensation comes to **₹45,650/-**, which requires to be satisfied by the Insurance Company. The Tribunal has awarded interest at the rate of 6%. Interest being awarded now-a-days is 9%. We grant interest at the rate of 8% on the enhanced compensation from the date of filing of the claim petition i.e., 26.12.2000, except for the period of delay involved in filing the appeal and till the date of remittance of the process charges in the year 2009 as per order of this Court dated 3.12.2009. Since the policy is admitted, Insurance Company is directed to satisfy the amount within a period of one month from the date of receipt of a copy of this judgment.

Appeal is disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S.to Judge