

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

MACA.No. 1456 of 2012 ()

(AGAINST THE AWARD IN OPMV 1237/2004 of M.A.C.T.,KOZHIKODE DATED
10-07-2008)

APPELLANT(S)/PETITIONER:

M.P. MOHAMMED AGED 48 YEARS
S/O.MOIDEEN, VALAPPIL HOUSE, THAHZE ANGADI
JUMA MASJID ROAD, KOYILANDY P.O., KOZHIKODE DIST

BY ADVS.SRI.P.M.HARRIS
SRI. VINAY PRATHAAP

RESPONDENT(S):

1. THE DIRECTOR GENERAL OF POLICE
POLICE HEADQUARTERS, THIRUVANANTHAPURAM-695001

2. KERALA STATE INSURANCE DEPARTMENT OF MOTOR VEHICLES,
THIRUVANANTHAPURAM-695001

R1 AND 2 BY ADV. GOVERNMENT PLEADER SMT. ROSE MICHAEL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 14-09-2015, 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.1456 OF 2012
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Dated this the 14th September , 2015

J U D G M E N T

K. Harilal, J:

Appellant is the claim petitioner in O.P.(MV)No.1237 of 2004 on the file of the Motor Accidents Claims Tribunal, Kozhikode. The above claim petition was filed under Section 166 of the Motor Vehicles Act claiming compensation for the injuries sustained by him in a road traffic accident. According to the appellant on 14.10.2003, while he was walking through the side of a public road, a motor cycle bearing No. KL.01X/9630 came from the opposite side knocked him down and as a result of which, he has sustained severe injuries causing damages and disability to his body.

2. The appellant was aged 48 years and he was a barber by profession at the time of accident. The offending motor cycle

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was owned by the first respondent and insured with the second respondent. Therefore, the respondents are jointly and severally liable to pay compensation to him. He claimed an amount of Rs.3 lakhs as compensation.

3. The respondents have not filed written statement disputing the claim. The appellant was examined as P.W 1 and Exts. A1 to A5 and C1 were marked. After analysing the evidence on record, the Tribunal found that the accident occurred by rash and negligent driving of the vehicle and that the second respondent is liable to indemnify the first respondent. The Tribunal passed the impugned award granting a lumpsum amount of Rs.41000/- as compensation. Inadequacy of the quantum of compensation awarded by the Tribunal under various heads made the appellant to approach this Court by filing this appeal.

4. The learned Counsel for the appellant advanced arguments challenging inadequacy of the quantum and disproportionality of the amount with the severity of the injuries. According to the learned Counsel, the Tribunal has not followed

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the method of calculating the compensation to the injured, as settled by the Apex Court by plethora of judicial precedents. It is contended that the Tribunal has failed to reckon monthly income of the appellant. So also, percentage of the disability found by the Medical Board has been totally discarded without any reasoning. Per contra, the learned Counsel for the respondents advanced his arguments to justify the quantum of compensation awarded under various heads. According to the respondents, the amount determined by the Tribunal is just and reasonable.

5. The short point that arises*** for consideration is whether the appellant is entitled for any enhancement in the quantum of compensation under any of the heads awarded by the Tribunal. As rightly pointed out by the learned Counsel for the appellant, going by the impugned award, it is seen that, the Tribunal has not made any earnest attempt to assess the sufferings and discomforts caused to the appellant due to the injuries, to award compensation payable in terms of money.

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It is the specific case of the appellant that he is a barber by profession and was running a barber shop. If that be so, the Tribunal ought to have reckoned probable monthly income of the appellant. The accident was in the year 2003. Considering the money value and the reasonable daily earnings of a Barber at that time, we deem it fit and proper to reckon Rs.3000/- as monthly income. Thus for the loss of income for four months, he is entitled to get a total sum of Rs.12000/- and after deducting Rs.5000/- granted by the Tribunal, he is entitled to get an additional sum of **Rs.7000/-**. Similarly, as rightly pointed out by the learned Counsel for the appellant, the Tribunal, without assigning any reason discarded the disability certificate and no amount had been given for permanent disability. It is pertinent to note that, it has come out in evidence that he is a barber by profession and he can do the work only in a standing position. The discharge summary shows that he has suffered fracture of both the bones of left leg close to malleolus and required prolonged inpatient treatment. We find no reason to discard the

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credibility or reliability of Ext.C1 disability certificate issued by the medical Board. Thus the appellant is entitled to get a total sum of **Rs.93,600/-** for the permanent disability caused to him. (3000 x 12 x 13 x 20/100)

6. The Tribunal has granted only Rs.10000/- towards pain and suffering. Considering the grievous nature of injury, we find that the appellant is entitled to get **Rs.5000/-** more under that head. Similarly under the head- loss of amenities, considering the discomforts which he has suffered during the long course of treatment, he is entitled to get **Rs.5000/-** more.

7. Having regard to the long period in which he was bed ridden due to the fracture, the appellant is given **Rs. 3000/-** as bystander's expense. Thus, the appellant is entitled to get an additional compensation of **Rs.1,13,600/-** (Rupees one lakh thirteen thousand and six hundred only) (7000 + 93600 + 5000 + 5000 + 3000 = 1,13,600/-). It is made clear that the enhanced compensation will not carry interest for 127 days, the period of delay in re-presenting the appeal and also for 1088

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days, the period of the delay in filing the appeal. But he is entitled to get interest at the rate of 9% per annum for the rest of the period (ie from the date of filing the petition before the Tribunal till realisation, after excluding the period of delay in representing and filing the appeal).

The second respondent is directed to deposit the entire compensation within three months from the date of receipt of a copy of the judgment.

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

**K. HARILAL,
JUDGE**

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