

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

MACA.No. 1952 of 2005 ()

AGAINST THE AWARD IN OPMV 245/2002 of M.A.C.T. TIRUR DATED 02-08-2005

APPELLANT/PETITIONER:

FASEELA (MINOR), AGED 12 YEARS (MINOR)
REPTD. BY NEXT FRIEND/FATHER
POTTARATH MOIDEEN, S/O.MAMMI, P.O.KUTTIPPURAM
TIRUR TALUK, MALAPPURAM.

BY ADV. SRI.ESM.KABEER

RESPONDENTS:

1. M.H.ABDUL SALEEM
S/O.HAMZA, MADATHINKAL HOUSE, P.O.THIRUNAVAYA
TIRUR TALUK, MALAPPURAM.

2. K.V.GOPALAN,
ACHUTHA NIVAS, POTHANUR.P.O, POLPAKARA
TIRUR TALUK, MALAPPURAM.

3. UNITED INDIA INSURANCE CO. LTD.,
PONNANI.

R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
BABU MATHEW P. JOSEPH, JJ.**

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M.A.C.A. No. 1952 of 2005

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Dated, this the 29th day of July, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant suffered injuries in a motor accident that occurred on 13.02.2002 involving a bus driven by the first respondent, owned by the second respondent and insured with the 3rd respondent. A petition was filed before the Motor Accidents Claims Tribunal, Tirur, on behalf of the minor appellant claiming compensation on account of the injuries suffered by her in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligent driving of the bus by the first respondent and awarded total compensation of Rs.29,000/- under various heads as follows :

Transport to hospital	: Rs. 1,500/-
Expenses for bystander	: Rs. 500/-
Medical expenses	: Rs.10,400/-
Extra nourishment	: Rs. 1,000/-

Damages of clothing	: Rs. 500/-
Pain and sufferings	: Rs.10,000/-
Loss of amenities	: Rs. 5,000/-

(Rounded to Rs.29,000/-)

The third respondent Insurance Company was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 3rd respondent. Since the third respondent has admitted the insurance cover for the vehicle involved in the accident, notice to the respondents 1 and 2 is dispensed with.

3. The appellant had sustained cerebral edema in the accident, apart from sustaining an abrasion over the right elbow and a contusion on the right occipital region. She was admitted to hospital on 13.02.2002 and discharged on 16.02.2002. She was aged 9 at the time of the accident. Ext.A6 permanent disability certificate has been produced in

order to substantiate the case of the appellant that she has sustained permanent disability of 20%. The appellant was not examined in this case. Nobody else was examined on behalf of the appellant. The doctor who had issued Ext. A6 permanent disability certificate was also not examined. In the absence of cogent evidence supporting the case of the appellant that she had suffered permanent disability to the tune of 20%, the learned Tribunal rightly ignored the certificate certifying 20% permanent disability. We have no reason to interfere with the finding so entered by the learned Tribunal in the absence of supporting evidence justifying such a permanent disability. We find no reason to enter a finding that the appellant would have sustained such a permanent disability. We also do not find any reason to interfere with the compensation awarded by the learned Tribunal under various heads, except the compensation of Rs. 5,000/- awarded under the head of loss of amenities. The fact remains that the appellant had sustained cerebral edema in the accident. Therefore, on considering the probabilities, we enhance the

compensation awarded under the head of loss of amenities to Rs.15,000/-. Thus, the appellant is entitled to Rs.10,000/- (Rupees ten thousand only) as additional compensation over and above the compensation awarded by the Tribunal. The said amount of Rs.10,000/- shall carry interest @ 9 % per annum from the date of filing of the claim petition till realisation. The 3rd respondent Insurance Company shall deposit the amount within 30 days from the date of receipt of a copy of this judgment.

The appeal is allowed in part as above.

Sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd