

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

MACA.No. 2059 of 2005 ()

(AGAINST THE AWARD IN OPMV 1435/2001 of MACT MUVATTUPUZHA DATED
26-07-2005)

APPELLANT/PETITIONER:

BINU.S/O. AVIRACHAN
AGED 30 YEARS, PUNNAPPILLIL HOUSE, KIZHUMURI KARA
KIZHUMURI.P.O.

BY ADVS.SRI.PEEYUS A.KOTTAM
SRI.KRISHNA PRASAD

RESPONDENTS/RESPONDENTS:

1. P.P.KURIAKOSE, S/O. PAILY
PULLANNOOR HOUSE, MEKKADAMPU.P.O, VALAKOM.

2. ORIENTAL INSURANCE COMPANY LTD.,
KIZHUMURI KARA, KIZHUMURI.P.O.

3. K.G.RAJESH, S/O.GOPINATHAN NAIR,
GOPI NIVAS, MAMPILLY HOUSE, PUTHENCROUZ.P.O.

4. SURESH, S/O.KUMARAN,
PERINGATTIL HOUSE, KIZHUMURI KARA, KIZHUMURI.P.O.

R2 BY ADV. SRI. GEORGE CHERIAN SC B/O
R2 BY SRI GEORGE CHERIAN (SR) (BY ORDER)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
10-09-2015, 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.2059 OF 2005
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Dated this the 10th September, 2015

J U D G M E N T

K. Harilal, J

The appellant is the petitioner in O.P.(MV)No.1435 of 2001 on the file of the Motor Accident Claims Tribunal, Muvattupuzha. The above claim petition was filed under Section 166 of the MV Act, claiming compensation for the injuries sustained by him in a road traffic accident. According to him, on 30.09.2000, while he was travelling as a pillion rider on a motor cycle ridden by the petitioner in O.P.(MV)No.1434 of 2001 along Ernakulam-Muvattupuzha road, a tractor bearing registration KL.7L.3437 driven by the first respondent hit on the motor cycle and as a result of which, both riders sustained grievous injuries. The tractor was owned and driven by the first respondent and insured with the second respondent at the time of accident. So the respondents are jointly and severally liable to pay the compensation for the grievous injuries suffered by him. He

claimed an amount of Rs. Two lakhs as compensation.

2. The second respondent has filed the written statement admitting the coverage of policy, but denied the allegation that the first respondent had driven the vehicle with rashness and negligence. So also disputed the correctness of the quantum of compensation under different heads. The evidence consists of oral evidence of P.W.1 to P.W.4 and Exts. A1 to A21. No evidence was adduced by the respondents. After considering the evidence on record, the Tribunal has passed the impugned award granting Rs.62000/- as compensation. Inadequacy of the quantum of compensation under different heads are challenged in this appeal.

3. The learned Counsel for the appellants advanced arguments highlighting the inadequacy of the quantum of amount fixed towards loss of earning , permanent disability and pain and suffering. According to him there is no justification in disbelieving the disability certificate. In all respects, ,the Tribunal failed to determine a just compensation, as provided under law, the learned Counsel submits.

4. The point to be considered is whether the appellant is

entitled to get any enhancement in the quantum of compensation under any of the heads under which compensation has been granted by the Tribunal. The appellant has claimed a total compensation of Rs.2,72,000/- (limited to Rs. 2 lakhs). Ext.A16 is a copy of the accident register cum wound certificate issued from the Medical Mission Hospital, Kolencherry. The details of injuries sustained by the petitioner are in the following terms.

“Abrasion over the lower 3rd of right thigh cut wound over the antero lateral aspect (5 x 3 cm) of upper 3rd of right leg, antero medial aspect of upper 3rd of right leg (5 x 3 cm.). Cut wound over the upper 3rd of right leg 3 x 2 cm.”

Ext.A17 is the discharge certificate, which shows that he was treated as an inpatient from 30.09.2000 to 06.11.2000. The injuries sustained by the appellants , as noted by the Tribunal, in the award as per Ext.A17, are in the following terms:

“It shows that wound debridement of lacerations over right knee was done and stay sutures were applied that right hand wounds were debrided and each finger was transfixed with K-wires and that left leg lacerations was sutured. “

Thus, injuries sustained by the claimant stands proved by Ext.A17 discharge certificate. There is no reason to disbelieve the credibility or reliability of injuries noted in Ext.A17. Going by the award, it is seen that the appellant had claimed that he was having monthly income of Rs.3000/-. The Tribunal has accepted the said claim as such; but towards loss of earnings, the Tribunal has awarded compensation only for a period of two months.

5. Having regard to the severity of the injuries and long duration in which he was undergoing treatment as inpatient, we find that the period of two months fixed by the Tribunal is quite inadequate and that he is entitled to get compensation of Rs.12000/- for the loss of earnings, for a period of four months, and thereby after giving credit to the amount of Rs.6000/- granted by the Tribunal, he is entitled to get additional compensation of **Rs.6000/-** also under that head. Compensation fixed for transportation and bystander's expense are very low and the same deserves to be enhanced by **Rs.1500/-** under each head. As regards pain and suffering, the Tribunal has awarded Rs.8000/- though the appellant was treated as an inpatient in the hospital from 30.09.2000 to

06.11.2000. But considering the long duration of the period in which he was hospitalized and the grievous nature of the injuries discernible from Exts.A16 and !7, we find that the said amount is inadequate and the same would stand enhanced to Rs.15000/-. Hence, after giving credit to Rs.8000/- granted by the Tribunal, the balance compensation payable under this head will come to **Rs.7000/-**.

6. We notice that no amount has been awarded by the Tribunal for loss of amenities. Having regard to the long duration of treatment as inpatient, which he had undergone, we find that he is entitled to get compensation for loss of amenities also and we fix the same at **Rs.20000/-**. As regards compensation for permanent disability, the doctor had issued Ext.A20 disability certificate assessing the disability at 30%. The Tribunal has noted the disability in the following terms:

It is stated in the certificate that there was extensive scarring on the medial aspect of right knee joint with soft tissue loss underneath the scar that there is 10% limitations of flexion of the right knee joint and that sitting on the ground in squatting position is difficult."

But the Tribunal discarded the above disability Certificate and

granted Rs.20,000/- in lumpsum. Even though the doctor who issued the certificate was examined as P.W.2, the appellant failed to produce the disability certificate assessed by the Medical Board, which would be more reliable than the certificate issued by P.W.2. However, having regard to the severity of injuries, as evidenced by Ext.A20, we feel that, being a young man aged 28 only, the grievous injuries caused by the accident are likely to affect his normal life and work to some extent. The Tribunal is not justified in discarding Ext.A20 in toto and taking a reasonable stand, we fix the permanent disability at 10%. Thus the petitioner is entitled to get compensation for permanent disability at Rs.64800/- ($3000 \times 12 \times 18 \times 10/100$). After giving credit to the sum of Rs.20000/-, the balance payable under the above head comes to **Rs.44800/-**. Thus the appellant is entitled to get an additional compensation of **Rs.80800/-** (Rupees eighty thousand and eight hundred only) (**Rs. 6000 + 1500 + 1500 + 7000 + 20000 + 44800 = 80800**). The appellant is also entitled to get interest at the rate of '9%' per annum for the additional amount except for the period from 23.12.2005 to 02.06.2011, till the date of remittance of process.

M.A.C.A.No.2059 OF 2005

7

The second respondent/Insurance Company is directed to remit the entire compensation within a period of one month from the date of receipt of a copy of the judgment.

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

**K. HARILAL,
JUDGE**

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