IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

MACA.No. 2070 of 2005 ( )

(AGAINST THE AWARD IN OPMV 783/2002 of ADL.D.C. & MACT,THODUPUZHA DATED 12.09.2002)

APPELLANT/PETITIONER:

SUJO, S/O. THOMAS
VADAKKANATTU, RAJAKONDOM KARA, ANAKARA VILLAGE
RAJAKANDOM.P.O.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENT(S):
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1. ALEYKUTTY CHERIAN
PULLATHIL HOUSE, PERUMBAIKAD.P.O, KOTTAYAM.

2. NEW INDIA ASSURANCE CO. LTD.,
KOTTAYAM.

R2 BY ADV. SRI ZIYADRAHMAN(BY ORDER)
R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.

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M.A.C.A.No.2070 OF 2005

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Dated this the 4th September, 2005

J U D G M E N T

P.R. Ramachandra Menon, J:

This appeal arises from the award dated 15.02.2005 passed by the Tribunal in O.P.(MV) No.783 of 2002, whereby a total compensation of Rs. 1,09,480/- was awarded with interest at the rate of 6% per annum from the date of the petition. The sequence of events narrated in the petition shows that the appellant sustained serious injuries on 16.06.2002, when he was travelling as a passenger in an autorickshaw bearing registration No.KL.5B.2197. When the autorickshaw reached the place of occurrence, the bus bearing No. KEK.1827 (owned by the first respondent, driven by the second respondent and insured by the third respondent) came from the opposite side and hit against the autorickshaw causing serious injuries including fracture and such other adverse consequences. This led to the claim petition preferred before the Tribunal.

2. The first and second respondents chose to remain ex parte. The third respondent filed written statement and sought to contest the matter mainly with regard to quantum and negligence. After evaluating the merits , the Tribunal fixed negligence on the driver of the bus and awarded amounts under various heads fixing total compensation as mentioned above; inadequacy of which is under challenge.

3. Heard the learned Counsel for the appellants as well as the learned Counsel for the Insurance Company.

4. The injuries sustained by the appellant as discussed in paragraph 9 are in the following terms:

1. Lacerated wound with skin loss or left injurnal region extending into left scrotum about 1 x 2.5 cms.
2. Inability to move left lower limb
3. Lacerated wound on the left paretal region
4. Pain and tenderness left iliac possa.
5. Contusion on left shoulder and left arm.
6. Absence of perepheral pulsation of left lower limb
7. Femoral vein torn irregularly.

5. Despite the specific plea that the claimant was getting Rs.100/- per day, as certified by the employer vide Ext.A9 certificate, the Tribunal chose to reckon only a sum of Rs.2000/- as the monthly salary to work out the compensation, particularly in respect of the disability certified as 10%. The learned Counsel for the appellant submits that the Tribunal ought to have reckoned Rs.2600/- as the monthly income, in view of availability of work for 26 days. The learned Counsel for the Insurance Company submits that the amount awarded is quite adequate and that no interference does require to be made with regard to the award passed. The amounts awarded by the Tribunal as given in paragraph 10 of the award are as given below:

1.	Loss of earning	:	Rs.2000/-
2.	Transportation	:	Rs.3000/-
3.	Damage to clothing	:	Rs.250/-
4.	Extra nourishment	:	Rs.1000/-
5.	Expense of bystander	:	Rs.2700
6.	Medical expense	:	Rs.41728/-
7.	Pain and suffering	:	Rs.18000/-

8. Permanent disability : Rs.40800/-

6. After hearing both the sides, we find that the course pursued by the Tribunal without proper regard to Ext.A9 certificate, though the employer who issued the said certificate was not examined, is not correct. This is more so since the accident occurred was in the year 2002 and the money value as well as the cost of living index can easily be realised and recognised by other means. That apart, the course to be followed in the said circumstances has been made clear by the Apex Court as per the decision in ***Syed Sadiq and others vs. Divisional Manager, United India Insurance Company Ltd.*** [**(2014) 2 SCC 735**] In the said circumstance, we find it fit and proper to reckon the monthly salary of the appellant at Rs.2600/-. The compensation for permanent disability**,** adopting the said figure, reckoning the multiplier as '17' (as adopted by the Tribunal) and the extent of disability certified at 10% , comes to **Rs.52040/-.**[2600 x 12 x 17 x 10/100]. After giving

credit to the sum of Rs.40800/- the balance payable under this head comes to **Rs.11240/-.**

7. This Court finds that the injuries caused to the appellant are quire serious, which naturally would have disabled him from attending the duty for quite long; more so he being a worker engaged on daily wages . We find it fit and proper to reckon the same as 6 months and the amount of compensation payable towards loss of earning comes to Rs.15600/- (2600 x 6). After giving credit to the sum of Rs.2000/- already awarded by the Tribunal, the balance comes to Rs**.13600/**-. The Tribunal has rightly reckoned the extent of certified disability as 10% and worked out the compensation. But , unfortunately, the Tribunal omitted to take note the fact that the injuries would result in loss of amenities, despite which, absolutely no amount has been awarded under this head. We find that the appellant is required to be paid a sum of **Rs.25000/**- under this head as well. The total balance compensation payable under the above heads come to **Rs.49840/-**(**Rupees forty nine thousand eight hundred and forty only)**. The Tribunal has reckoned only 6%

as interest payable which according to us is on the lower side . We find it necessary to enhance the same to **9%** per annum, for the period from the date of filing of the petition before the Tribunal till realisation. It is ordered accordingly. In view of the fact that the policy stands admitted, the insurance company is directed to deposit the entire amount within one month from the date of receipt of a copy of the judgment.

Appeal stands disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

SUNIL THOMAS,
JUDGE

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