

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. 2095 of 2005 ()

(AGAINST THE AWARD IN OPMV 1434/2001 of MACT MUVATTUPUZHA DATED
26-07-2005)

APPELLANT/PETITIONER:

SURESH, S/O.KUMARAN, AGED 34 YEARS,
PERINGATTIL HOUSE, KIZHUMURI KARA, KIZHUMURI P.O.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT(S) /RESPONDENTS:

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

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

R2 BY ADV. SHRI 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.2095 OF 2005
.....

Dated this the 10th September, 2015

J U D G M E N T

K. Harilal, J:

The appellant is the claim petitioner in O.P.(MV)No. 1434 of 2001 on the file of the M.A.C.T., Muvattupuzha .The above claim petition was filed under Section 166(1)(a) of the M.V.Act, claiming compensation for the injuries suffered by him in a road traffic accident. According to him, on 30.09.2000, while he was riding a motor cycle bearing registration No..KL.7J/3134 along ErnakulamMuvattupuzha road from east towards west, a tractor bearing registration No. KL.7L.3437 driven by the first respondent came from the opposite direction hit his motor cycle and thereby he has sustained severe injuries, resulted in permanent partial disability.

2. According to the appellant, the accident occurred only because of the rash and negligent driving of the first respondent, who is the driver cum owner of the above said tractor. The

second respondent is the insurer of the offending tractor. Thus respondents 1 and 2 are jointly and severally liable to pay compensation for the injuries suffered by him and the resultant damages caused to him. The appellant claimed a total sum of Rs.3,00,000/- as compensation.

3. The second respondent filed written statement admitting the policy coverage; but denied the allegations of rashness and negligence in driving the tractor levelled against the first respondent. The documentary evidence consists of Exts.A1 to A21 and P.W.1 to 4 were examined from the side of the appellant. After analysing the evidence on record, the Tribunal passed the impugned award granting total compensation of Rs.,103800/- to the appellant. Inadequacy and disproportionality of the quantum of compensation with the severity of the injuries made the appellant to approach this Court by filing this appeal.

4. The learned Counsel for the appellant advanced his arguments, mainly contending that the quantum of compensation fixed by the Tribunal is inadequate and disproportionate with the severity of the injuries and the resultant damages caused to the appellant. The learned Counsel specifically pointed out that the

monthly income fixed by the Tribunal is very low and unreasonable. Similarly, even though the doctor who treated him has certified that he has sustained 30% permanent disability, the Tribunal went wrong by totally discarding Ext.A13 disability certificate and granting only a meagre amount of Rs.15,000/- without any basis. It is also contended that the quantum of compensation granted under the heads 'pain and suffering' and 'loss of amenities' are also inadequate, when comparing with the duration of the period in which the appellant had suffered pain and lost his normal comforts.

5. Per contra, the learned Counsel for the second respondent/Insurance Company advanced arguments, justifying the quantum of compensation awarded by the Tribunal. According to the learned Counsel, the Tribunal has rightly analysed the credibility and reliability of Ext.A13 disability certificate produced by the appellant and the same was discarded on sufficient and sound reasonings. It is also contended that being a toddy tapper, loss of hearing power cannot be taken as decisive factor affecting his earning power or normal life or occupation.

6. In view of rival submissions made across the Bar, the point to be considered is whether the appellant is entitled to get enhancement in the quantum of compensation under any of the heads awarded by the Tribunal.

7. Coming to the income, the case of the appellant is that he is getting Rs.4500/- per month. The employer of the toddy shop was examined as P.W.3, and he has given evidence to the effect that the petitioner was having an average salary of Rs.8979/- per month. Apparently, the claim of monthly income stands in inconsistency. But, as rightly observed by the Tribunal, being a toddy tapper, the records relating to his membership and monthly contributions by the employer in the Toddy Workers' Welfare Fund are the best and reliable evidence to substantiate his income and he could have produced best evidence available in hand. In the absence of such records, the Tribunal is justified in discarding the evidence of P.W3, though he claimed that he is the employer of the appellant. But we further find that considering the money value and probable wages of a toddy tapper in prevalence during the year 2000 and the quantum of monthly salary fixed by the Tribunal at Rs.1500/- per month is

much on the lower side and the same deserves to be enhanced to **Rs.3000/-** per month. Considering the fact that the claimant was hospitalised as an inpatient from 30.09.2000 to 15.11.2000, we find that the period reckoned by the Tribunal , i.e. three months for awarding compensation under the head 'loss of earning ' is also unreasonable and the same will stand enhanced to 'six' months. Thus the appellant is entitled to get a sum of Rs.18000/- under the head of loss of earnings. After giving credit to the sum of Rs.4500/- already awarded by the Tribunal under this head, the balance payable under this head comes to **Rs.13500/-**

8. As regards 'pain and suffering', the Tribunal has awarded only a sum of Rs.20000/-. But going by Exts.A7, A8 and A13 medical reports, it is seen that the injuries sustained to the appellant was very serious and he was treated as inpatient in the hospital from 30.09.2000 to 15.11.2000. Having regard to the nature of the employment, which requires physical effort, and the long duration of the period, in which he was bed ridden as inpatient, the claimant/appellant is entitled to get a sum of Rs.30000/- under the above head. For the above reason, the

claimant is entitled to get Rs.25000/- also for the 'loss of amenities'. After giving credit to the amount already awarded under the above two heads, ie.. Rs. 20000/- and Rs.6000/-, the balance payable is **Rs. 10000/- and Rs.19000/-** respectively.

9. Coming to compensation for permanent disability, the claimant/appellant is relying on Ext.A14 disability certificate, which shows that the petitioner had suffered perforation of right eardrum and that he has deafness of both ears (right side mixed and left side S.N. Deafness). It is also certified that the claimant has giddiness and tinnitus (left side); and further that the deafness , giddiness and tinnitus are permanent. The disability resulted has been assessed by the doctor at 30%. It is true that the doctor who issued the certificate was examined as P.W.1 and the Tribunal has analysed the credibility and reliability of the disability certificate with reasoning. But, we are of the opinion that all the reasons stated for discarding the said certificate in toto is not acceptable to us. Having regard to the severity of the injuries and the resultant damages revealed from Exts.A7, A8 and A13, we find that the disability can be assessed at 10%. In the absence of assessment of disability by a Medical

Board, we are also not inclined to accept Ext.A13 certificate as such. Thus under the head of permanent disability, the petitioner is entitled to get **Rs.49800/-** as additional compensation. $[(3000 \times 12 \times 18 \times 10/100) - 15000 = 64800 - 15000 = \text{Rs.}49800]$.

10. Thus we find that the appellant is entitled to get a total amount of **Rs.92,300/-** (Rupees ninety two thousand and three hundred only)(**i.e. Rs.13500 + 10000 + 19000 + 49800 = 92300**) in addition to the quantum of compensation awarded by the Tribunal. Needless to say, that the petitioner is entitled to get interest at the rate of '**9%**' for the enhanced amount, except for the period from 19.01.2006 to 02.06.2011 or from 19.01.2006 till the date of remittance of process charge.

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

**K. HARILAL,
JUDGE**