

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

MACA.No. 2116 of 2005 ()

(AGAINST THE AWARD IN OPMV 990/2000 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 24-01-2005)

APPELLANT/PETITIONER::

UNNIKALI ANDARJANAM,
W/O. PARAMESWARAN NAMBOODIRI, KAKKATTU MANA
ALAMKADAVU P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.SREEKANTH.K.R
SMT.THARA THAMBAN

RESPONDENTS/RESPONDENTS::

1. M. MOIDUTTY, S/O. AYAMUTTY,
MULLENGADON HOUSE, U.P. HILLS, MALAPPURAM DISTRICT

2. MOHAMMED, S/O. AVARAMKUTTY,
KADAKKADAN HOUSE, P.O. KOTTAKKAL, MALAPPURAM DISTRICT.

3. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, U.P. HILLS, MALAPPURAM DISTRICT.

R3 BY ADV. SRI.S.ARUN RAJ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRA, JJ.**

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M.A.C.A.No.2116 OF 2005
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Dated this the 27th October, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Inadequacy of compensation awarded by the Tribunal in respect of injuries caused in a road traffic accident is the subject matter of challenge in this appeal. The appellant was travelling as a passenger in the bus bearing No.KL.10E/9187 owned by the first respondent, driven by the second respondent and insured by the third respondent. While so, the bus hit against a lorry bearing No.KL.11F/2323 coming from the opposite side, causing serious injuries to the appellant and several other passengers, leading to different claim petitions. All those petitions were taken together, considered and decided by the Tribunal leading to the award, which is now under challenge in this appeal.

2. The appellant was examined as P.W.1. Documentary evidence was adduced by the claimants in the concerned cases,

which have been commonly numbered as Exts.A1 to A46. Oral testimony of P.Ws. 2 to 4 also forms part of the materials on record.

3. The claim was sought to be resisted by the Insurance Company on general grounds. The respondents, but for the Insurance Company sought to remain absent and were set ex parte. On the basis of available materials on record and evidence adduced, the Tribunal arrived at a finding that the accident was only because of negligence on the part of the driver of the lorry and the liability was sought to be fixed accordingly.

4. Admittedly, the appellant herein was aged more than 62 years and was a house wife. The injuries sustained by the appellant, as discussed in paragraph 10 of the award are in the following terms.:

"Lacerated wound (Rt.) side of face, bleeding from nose, fracturs maxilla (Lt.) ethmoid (Lt) frontal bone, (Lt) Zygma (Lt) zygomatic neck, nasal bone".

The amounts awarded by the Tribunal under different heads are extracted below:

Head	Amount awarded by the Tribunal
Medical expense	23000
Permanent disability	3750
Pain and suffering	12000
Loss of amenities	10000
TOTAL	48750

The total compensation awarded was Rs.48750/- which was directed to be satisfied with interest at the rate of 6% per annum from 19.04.2000 till realisation together with cost.

5. Heard the learned Counsel for the appellant as well as the learned Standing Counsel for the Insurance Company.

6. It is seen that the appellant was having certified disability of 5% as revealed from Ext.A13, which was accepted by the Tribunal to work out the compensation payable in respect of the disability. For this purpose, the notional income was reckoned as Rs.15000/- per annum presumably in terms of the figures given in the Second Schedule of the Motor Vehicles Act,

M.A.C.A.No.2116 OF 2005

4

1988, which was introduced with effect from 14.11.1994. Admittedly, the accident occurred was on 12.12.1999. In the said circumstance, we find it appropriate to refix the monthly income as Rs.2000/- per month. On re-working the compensation for disability, the figures are in the following terms: $2000 \times 12 \times 5/100 \times 5 = 6000/-$. After giving credit to the sum of Rs..3750/-, awarded by the Tribunal, the balance comes to Rs.2250/-

7. The Tribunal has observed that the injuries sustained by the appellant dis-entitled her from pursuing any activity for a period of three months. But no amount has been awarded towards loss of earning . We find it fit and proper to grant **Rs.6000/-** (2000×3) under this head. Considering the gravity of injuries sustained by the appellant, we find it fit and proper to award a further sum of **Rs.8000/-** over and above the sum of Rs.12000/- awarded towards pain and suffering. Similarly, towards loss of amenities, the compensation awarded is enhanced to Rs.15000/- thus resulting in a balance sum of **Rs.5000/-**.

8. The total balance compensation payable comes to **Rs.21250/-** (Rupees twenty one thousand two hundred and fifty only). It is seen that the Tribunal had awarded interest at the rate of 6% per annum. But the actual rate of interest at that point of time could have been more, to an extent of 7.5%. The interest rate now being awarded is 9%. To strike a balance, we make it clear that the enhanced compensation shall carry interest at the rate of 8% from the date of petition till realisation. Since the policy is admitted, the third respondent/Insurance Company is directed to deposit the said amount within one month from the date of receipt of a copy of the judgment.

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

**ANIL K. NARENDRA,
JUDGE**