

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 1841 of 2012 ()

(AGAINST THE AWARD IN OPMV 1590/2007 of M.A.C.T., ERNAKULAM DATED
22-11-2011)

APPELLANT/APPELLANT:

NARAYANAN P.K. AGED 56 YEARS
S/O. KRISHNAN EMBRAMTHIRI
KRISHNA KRIPA ELAMANA NADUVILAMADOM
CHAKKAMKULANGARA TRIPUNITHURA.

BY ADVS.SRI.K.JANARDHANAN
SRI.K.J.MANU RAJ

RESPONDENTS/RESPONDENTS:

1. KRISHNA PRASAD J.
S/O. JAGADEESAN NAIR
KRISHNA THEJUS VEETIL C.C. 23/1088
RAMANKUTTY BHAGAVATHER LINE
PALLURUTHY KOCHI-682006.

2. K. JAGADEESAN NAIR. K
S/O. KRISHNAN THAMPY.K.
KRISHNA THEJUS VEETIL C.C. 23/1088
RAMANKUTTY BHAGAVATHER LINE PALLURUTHY
KOCHI-682006.

3. THE NATIONAL INSURANCE CO. LTD.
1ST FLOOR, DOOR NO. 16/959, SHALLIMAR CHAMBERS
P.T. JACOB ROAD, THOPPUMPADY, KOCHI-682006.

R3 BY SRI.M.A.GEORGE
BY ADV. SMT.SARAH SALVY
R1 AND 2 BY ADV. SMT.T.SUJA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

.....
M.A.C.A. 1841 OF 2012
.....

Dated this the 29th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Inadequacy of compensation awarded by the Tribunal in connection with the injuries sustained by the appellant in a road traffic accident occurred on 16.06.2007 is the subject matter of challenge in this appeal.

2. The factual sequence narrated in the appeal shows that the appellant, while proceeding on a motor cycle , was knocked down by a car driven by the first respondent, owned by the second respondent and insured by the third respondent, resulting in injuries involving fracture to the shaft of tibia and such other injuries as disclosed from Ext.A2 wound certificate. This resulted in hospitalization for nearly 12 days and incurring

M.A.C.A. 1841 OF 2012

2

medical expenses of about Rs.86072/- covered by Ext.A12 bills. The claim petition filed before the Tribunal was sought to be contested by the Insurance Company on general grounds. Evidence, both oral and documentary, was adduced from the part of the claimants by examining P.Ws. 1 to 4 and also by marking Exts.A1 to A17, besides Exts.X1 to X3 (marked as Court Exhibits.). After analysing the evidence on record, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the first respondent/driver of the car and the liability was sought to be fixed accordingly.

3. The claim of the appellant was that he was a Sales Assistant in a Private Limited Company with a monthly income of Rs.6630/-. After considering the pleadings and materials on record, the Tribunal reckoned a sum of Rs.6000/- as monthly salary and proceeded to work out the compensation. It is the case of the appellant that, vide Ext.X3 disability certificate, the disability was assessed as 20% by the Medical Board. But the Tribunal chose to reckon only an extent of 10% for working out

M.A.C.A. 1841 OF 2012

3

the compensation, that too , by adopting the multiplier of '8' in respect of the appellant, who was aged 57 years; thus granting a sum of Rs.57600/- under this head. Loss of earning is stated as Rs.171000/-, by virtue of loss of salary for the period during which he had availed leave, which was sought to be substantiated with reference to Ext.A15. This being the position, the total amount of Rs.233072/- awarded by the Tribunal is much on the lower side and hence interference of this Court is sought for by way of this appeal.

4. Heard the learned Counsel for the appellant and the learned Standing Counsel for the Insurance Company.

5. There is no dispute with regard to the monthly income as claimed by the appellant and reckoned by the Tribunal, i.e. at the rate of Rs.6000/- per month. By virtue of the law declared by the Apex Court in **Sarla Verma vs. Delhi Transport Corporation** [2009(6) SCC 121], which stands affirmed by a Larger Bench in **Reshma Kumari and ors vs. Madan Mohan and another** (2013 (2) KLT 304), there cannot be any

M.A.C.A. 1841 OF 2012

4

enhancement with regard to future prospects, if a person has already crossed the age of 50 years and as such, no enhancement of salary is possible under this head.

6. The injuries sustained by the appellant as shown in Ext.A2 wound certificate and discussed by the Tribunal in paragraph '10' are in the following terms:

“Comminuted fracture shaft of tibia distal 3rd ® side with fracture medial malleolus with tibial shaft ® side with serpental fracture fibula ® side and abrasion ® lower limb.”

The amounts claimed by the petitioner and the amounts awarded by the Tribunal are given in the form of a table in paragraph '17', which is reproduced below for convenience of reference.

Head	Amount claimed	Amount awarded
Loss of earning	18000	18000
Miscellaneous expenses	15000	4000
Medical expenses	120000	86072
Bystander expenses	15000	2400
Compensation for pain and suffering	35000	30000

M.A.C.A. 1841 OF 2012

Head	Amount claimed	Amount awarded
Compensation for continuing and permanent disability	75000	0
Compensation for loss of earning power	171000	57600
Compensation for loss of amenities and enjoyment in life	35000	35000
Total		233072

7. The learned Counsel for the appellant/petitioner submits that there was absolutely no rhyme or reason for the Tribunal to have reduced the extent of disability to 10% from the certified extent of 20% . It is settled law that disability shall be with reference to functional disability and not bodily disability. The Tribunal has sought to place reliance on the verdict passed by the Apex Court reported in **Rajkumar vs. Ajayakumar (2011(1) KLT 620(SC))**. That apart, the appellant has admittedly crossed the age of 57 years and there is no case for him that the salary which was being drawn by the petitioner /appellant came to be reduced under any circumstance because of the injuries and the alleged disability. The so called permanent disability was mainly

M.A.C.A. 1841 OF 2012

6

with reference to the grievance of the appellant that he was not in a position to 'kick-start the motor cycle', as referred to in paragraph 17. The scope of such contention has been discussed in the very same paragraph; ultimately taking only 10% as the actual disability reckonable for working out compensation in respect of the head - 'loss of earning power'. After hearing both the sides, this Court finds that the course pursued by the Tribunal does not warrant any interference at the hands of this Court.

8. With regard to extent of disability and the multiplicand , the learned Counsel for the appellant pointed out that, inspite of producing Ext.A15, regarding the loss of salary to the tune of Rs.1,71,000/-, the Tribunal has awarded only a sum of Rs.18000/-. The alleged loss of salary to the tune of Rs.1.71 lakhs certified by Metha Private Ltd. Co. , i.e. the employer of the appellant vide Ext.A15 is not seen substantiated with reference to other documents, which could have been the primary evidence, particularly contribution towards ESI,

M.A.C.A. 1841 OF 2012

7

contribution towards EPF, wage register, attendance register etc. . This Court cannot glibly swallow the version of the appellant in this regard. The claim originally put forth by the appellant (for the loss of earning for three months) was granted in toto by the Tribunal. However, considering the extent of injuries and the probable period of rest, this Court finds it fit and proper to grant one more month's salary, i.e. **Rs.6000/-** over and above the amount awarded by the Tribunal. Coming to the payment on fixation of loss of earning power, it is seen that the Tribunal has reckoned '8' as the multiplier. But, the proper multiplier as discernible from Column '4' of the table in the decision of the Apex Court in **Sarla Verma vs. Delhi Transport Corporation** [2009(6) SCC 121] should have been '9' . On re-working the compensation towards loss of earning power by adopting the multiplier of '9', the figure comes to Rs.64800/-. After giving credit to the sum of Rs.57600/- awarded by the Tribunal, the balance comes to **Rs.7200/-**. No other head does require any variation or modification. The total

M.A.C.A. 1841 OF 2012

8

balance compensation payable comes to **Rs.13200/- (Rupees thirteen thousand and two hundred only)**, which shall be satisfied with interest at the rate of 9% per annum from the date of the petition till realisation. Since the policy stands 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 this judgment.

The appeal stands disposed of.

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

**K. HARILAL,
JUDGE**

lk