

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 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

MACA.No. 124 of 2015 ()

(AGAINST THE AWARD IN OPMV 2607/2001 of ADDL.DISTRICT COURT,
KOZHIKODE DATED 24-04-2008)

APPELLANT(S)/PETITIONER:-:

A.K.ROOPESH, AGED 26 YEARS
S/O.BALJI, RESIDING AT CHANDRALAYALM
NEAR COLLECTORS BUNGLAW, P.O.WEST HILL, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S)/2ND RESPONDENT:-:

THE NEW INDIA ASSURANCE CO.LTD.,
BRANCH OFFICE, TRIPURI BUILDING, EAST NADAKKAVU
KOZHIKODE - 673 001.

BY ADV. SRI.SAIGI JACOB PALATTY
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-09-2015, 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. 124 OF 2015
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Dated this the 3rd September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Inadequacy of compensation awarded by the Tribunal in O.P.(MV)No.2607 of 2001, in connection with the road traffic accident occurred on 22.07..2001 causing serious injuries to the appellant forms the subject matter of challenge in this appeal. The award was passed as early as on 24.04.2008 and the last date for filing the appeal expired on 23.07.2008. The appeal came to be filed with a petition to condone the delay of 2330 days. After considering the facts and circumstances as to the mischief committed by the advocates' clerk, finally leading to his removal from the registration issued by this Court, the delay was condoned as per the order dated 07.08.2015, subject to the condition that, if at all any enhancement of compensation was awarded by this Court, the appellant would not be entitled for interest for the period from 23.07.2008 till 12.01.2015.

2. The appellant was travelling as a pillion rider in the motor cycle bearing No.KL.12.4772 on 22.07.2001 and at about 10.40 a.m., a bus bearing No/.KRD 7738 came from the opposite side and knocked down the riders causing serious injuries to the appellant, who was aged 26 years at that time . Claiming a sum of Rs.2 lakhs as compensation, the appellant approached the Tribunal with his projected income as Rs.6000/- per month, he being a mechanic. The second respondent/Insurance Company alone sought to contest the matter by filing a written statement. No oral evidence was adduced from either side and the only evidence consists of Exts.A1 to A12, Ext.C1 and Ext,X1. After evaluation of the evidence, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the bus and hence liability was fixed accordingly. After considering the extent of disability certified as per Ext.C1 Medical Board report (12%) and the contents of Ext..X1 treatment record along with Ext.A2 wound certificate and Ext.A3 discharge summary, the Tribunal found that the injuries necessitated hospitalization

for a period of 120 days by way of different spells. However, observing that the appellant was also being treated for **Hepatitis** in the meanwhile, medical expenses incurred in respect of the said disease was held as not liable to be granted and rest of the medical bills were sanctioned. Awarding amounts under different heads, the total compensation payable was fixed at Rs.1,12,340/- , which was directed to be disbursed with interest at the rate of 8% per annum, mulcting the liability upon the shoulders of the Insurance Company, who had admitted existence of valid policy coverage. Inadequacy of the compensation made the appellant to approach this Court .

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

4. After hearing both the sides and also after going through the the materials on record, this Court finds that the accident had occurred on 22.07.2001 when the victim was a youth of 26 years. It is true that no document was produced to show his avocation as a mechanic or a skilled worker and he also did not

choose to mount the box to say anything in this regard and to make himself available to be confronted with, by the other side in the cross examination. Still, going by the principles enunciated by the Apex Court on many an occasion and considering the totality of the facts and circumstances, this Court finds that there is considerable force in the submission made by the learned Counsel for the appellant that the Tribunal ought to have reckoned Rs.3000/- as monthly income so as to work out the compensation for disability. This Court finds it fit and proper to reckon the monthly income accordingly and the compensation is to be worked out under appropriate heads.

5. The entire disability certified by the Medical Board as per Ext. C1 has been reckoned by the Tribunal and as such, on re-working the compensation adopting the monthly income as Rs. 3000/- and applying the multiplier as 18, it comes to **Rs.77760/-**. $(3000 \times 12 \times 18 \times 12/100)$. After giving credit to the sum of Rs.51840/-, the balance comes to **Rs.25920/-**.

6. It is to be noted that there is no dispute with regard to the extent of hospitalization for a period of 120 days. But the

Tribunal has awarded compensation for loss of earning only for three months. We find that the compensation awarded by the Tribunal is quite inadequate and considering the nature and extent of injuries sustained by the appellant, as discussed in paragraph 7 of the award, the loss of earning should have been reckoned atleast for six months and we order the same accordingly. The compensation payable under this head then comes to Rs.18000/-. After giving credit to the amount of Rs. 6000/- already awarded, the balance comes to **Rs.12000/-**. The award does not require to be varied under any other head. The balance compensation payable to the appellant in respect of the injuries sustained by the appellant comes to **Rs.37920/-** (Rupees thirty seven thousand nine hundred and twenty only). By virtue of the interim order passed by this Court as mentioned hereinbefore, the appellant is not entitled for interest in respect of 2330 days, i.e. in respect of the delay in filing the appeal. The appellant is entitled to get interest for the remaining period , ie. from the date of filing of the petition before the Tribunal till the date of deposit, at the rate of 9% per

annum excluding the above 2330 days. In view of the fact that the policy stands admitted, there will be a direction to the Insurance Company to deposit the due amount before the Tribunal within one month from the date of receipt of a copy of the judgment.

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

**K. HARILAL,
JUDGE**