

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. 2022 of 2012 ()

(AGAINST THE AWARD IN OPMV 481/2009 of MACT PALA DATED 13-02-2012)

APPELLANT(S)/PETITIONER:

GOPINATHAN

S/O.VAVAKUTTY, KUNNUPURAM COLONY 386-A, VALIAKAM KARA
VADAKKEMURY VILLAGE, VAIKOM, NOW R/A.OMAKUNNEL HOUSE
POOVARANY P.O., POOVARANY VILLAGE-686577

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS/RESPONDENTS:

1. JIJO JOHN

S/O.P.J.JOHN, PUTHEZHATHU P.O., GOTHURUTHU
NORTH PARUR-PIN-683516

2. THE EDITOR MANAGING DIRECTOR,
MALAYALA MANORAMA, KADAPPAKADA, KOLLAM-PIN-691001

3. THE UNITED INDIA INSURANCE CO LTD
REP.BY ITS DIVISIONAL MANAGER, KOTTAYAM-PIN-686001

R1 & 2 BY ADV. SRI.MILLU DANDAPANI
R3 BY ADV. SRI.V.JAYAPRADEEP
BY SRI.JOHN JOSEPH VETIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD 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.2022 OF 2012
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Dated this the 4th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

The plight of a blind man, who finds it extremely difficult to make both ends meet, by virtue of the accident occurred, when he was knocked down by a motor cycle bearing No.KL.02-1509, is the subject matter projected in this appeal.

2. The appellant, a person aged 45 years was proceeding along the road, when the above motor cycle, ridden by the first respondent, owned by the 2nd respondent and insured by the third respondent came in a rash and negligent manner and knocked him down causing serious injuries including head injury. This led to the claim petition filed before the Tribunal.

3. The first and second respondents did not choose to

appear before the Tribunal. However, the first respondent has entered appearance before this Court, pursuant to the notice ordered in the appeal. The Insurance Company sought to contest the matter mainly with regard to quantum and negligence. No oral evidence was adduced from either side. Evidence only consists of Exts. A1 to A6 produced from the part of the claimants, besides Ext.X1 disability certificate issued by the Medical College, Kottayam certifying the permanent disability as 17% (produced from the part of the respondent). After evaluation of the facts and figures, the Tribunal awarded various amounts under different heads, granting a total compensation of Rs.89,950/-, which was directed to be satisfied with 7.5% interest from 02.07.2009, i.e. the date of filing of the claim petition. This is sought to be enhanced by filing this appeal.

4. Heard the learned Counsel for the appellant as well as the standing counsel for the Insurance Company.

5. Existence of valid policy in respect of the vehicle is conceded. No evidence is adduced with regard to the

negligence on the part of the rider of the vehicle and as such, the only question is regarding the quantum payable as compensation. It is seen that the Tribunal has reckoned only Rs.2000/- as the monthly income, so as to arrive at the compensation for disability. Admittedly, the accident occurred in the year 2004. The appellant himself was a blind person and the learned Counsel submits that he was maintaining his family consisting of his wife and two minor children, who unfortunately are blind. Considering the fact that the petitioner was maintaining his family consisting of his wife and children, that he was aged 45 years; that he was eking out his livelihood by virtue of being a street singer living at the alms provided by the merciful hands, this Court is of the view that the multiplicand fixed by the Tribunal is on the lower side and it requires to be enhanced by 50%. Accordingly, we find it fit and proper to fix the monthly income of the appellant as Rs.3000/-. But the particular circumstances under which the accident happened in the instant case have to be adverted to and totality of the

circumstances has to be taken into consideration. On re-working the compensation as above,, the appellant is entitled to have compensation for disability to an extent of **Rs.91,800/-** (3000 x 12 x 15 x 17/100) as against Rs. 61200/-. The balance compensation payable under this head comes to **Rs.30,600/-**.

6. The injuries sustained by the appellant are the following

1. Head injury
2. Acute subdural haemorrhage involving right frontal convexity
3. Mild diffuse cerebral edema
4. Fracture involving left lateral orbital wall anterior and postero lateral walls of left maxillary sinus with hemo sinus.
5. Seizure
6. Abrasion left side of face
7. Black eye.

Loss of earning has been compensated by the Tribunal for only to an extent of 'three' months. Considering the nature and extent of injuries it is quite inadequate and we find that the loss

of earning has to be compensated for at least 'six' months. (i.e. 3000 x 6). After giving credit to the amount of Rs.6000/- under this head, the balance comes to **Rs.12000/-**. In respect of the pain and suffering, the appellant sought for compensation of Rs.25000/-, whereas the Tribunal granted only Rs.9000/-. Considering the nature and extent of injuries , we find that the appellant was justified in seeking for Rs.25000/- We grant the same, thus resulting in a balance of **Rs.16000/-** The loss of amenities granted by the Tribunal is also much on the lower side, having awarded only a sum of Rs.8000/- We enhance the same to Rs.20000/- and the balance payable under this head will come to **Rs.12000/-**. The total balance compensation payable in respect of the injuries sustained in the accident is **Rs.70,600/-**. (Rupees seventy thousand and six hundred only). This amount shall be satisfied with interest at the rate of 9% per annum from the date of the petition filed before the Tribunal till realisation. Since the policy stands admitted, there will be a direction to the third respondent Insurance Company to deposit the said amount

M.A.C.A.No.2022 OF 2012

6

with interest within one month from the date of receipt of a copy of the judgment.

The appeal stands disposed of.

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

**SUNIL THOMAS,
JUDGE**

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