

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

MACA.No. 164 of 2015 ()

AGAINST THE AWARD IN OPMV 1898/2004 of M.A.C.T., KOZHIKODE DATED 10-12-2008

APPELLANT/PETITIONER:-

P.PRATHAPAN, AGED 43 YEARS,
S/O.RAJAN, RESIDING AT CHEEKKAKUNNU,
PARAMBA HOUSE, P.O MANGAD,
VIA.UNNIKULAM, KOZHIKODE

BY ADV. SMT.K.V.RESHMI

RESPONDENT/2ND RESPONDENT:-

NATIONAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, P.B NO 811,
NOOR COMPLEX,
MAVOOR ROAD,
KOZHIKODE, PIN- 673 001.

BY ADV. SMT.DEEPA GEORGE
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.164 of 2015

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Dated this the 9th day of June, 2015.

J U D G M E N T

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted by the Tribunal.

2. The claimant is a contractor. He was aged 33 years at the time of accident. The accident took place on 27.5.2003. A sum of Rs.1,00,000/- was claimed by him in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.38,559/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said

award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. The Tribunal found from Ext.A2 wound certificate that the claimant had sustained comminuted fracture on the lower end of humerus and upper end of ulna. The Tribunal also found that the claimant had undergone inpatient treatment in a hospital in connection with the injuries sustained by him for 20 days. The Tribunal further found that as part of the treatment, the claimant had to do open reduction and internal fixation.

5. Coming to the quantum of compensation, Ext.C1 is the disability certificate issued to the claimant from the Medical Board attached to the Medical College Hospital, Kozhikode. As per Ext.C1, the Medical Board certified that the claimant is suffering from 6% permanent disability. In Ext.C1, it is also stated that the claimant is suffering from 20% occupational disability.

6. Despite the fact that the claimant had undergone

inpatient treatment in a hospital for 20 days, no compensation is seen granted by the Tribunal towards loss of earnings. While fixing the compensation for continuing permanent disability, the Tribunal reckoned the yearly income of the claimant at Rs.20,000/-. Since the accident took place in the year 2003, I am of the view that the Tribunal should have reckoned the monthly income of the claimant at Rs.4,000/- and he should have been granted compensation for loss of earnings at least for a period of three months. The claimant is therefore entitled to a sum of Rs.12,000/- towards compensation for loss of earnings. No compensation is seen granted to the claimant towards extra nourishment. According to me, on the facts of this case, the claimant is entitled to a sum of Rs.2,000/- towards compensation for extra nourishment. No compensation is also seen granted towards bystanders' expenses. Since the claimant had undergone inpatient treatment for 20 days, according to me, the claimant is entitled to a minimum of Rs.2,400/- towards compensation for bystanders' expenses.

I have already found that the monthly income of the claimant is liable to be reckoned at Rs.4,000/-. In the circumstances, the claimant is entitled to compensation for continuing permanent disability reckoning his monthly income at Rs.4,000/- and disability at 6%, applying the multiplier of '17'. The claimant is therefore entitled to a sum of Rs.48,960/- on that head. As he was granted a sum of Rs.20,400/- on that head, he is entitled to a further sum of Rs.28,560/- towards compensation on that head. It is seen that the Tribunal has granted only a sum of Rs.8,000/- towards compensation for pain and sufferings. Having regard to the injuries sustained by the claimant and the treatment undergone by him as indicated above, I am of the view that the claimant is entitled to a further sum of Rs.7,000/- on that head. No compensation is seen granted to the claimant towards loss of amenities and enjoyments in life. On an evaluation of the materials on record, I am of the view that the claimant is entitled to a sum of Rs.5,000/- towards compensation on that head. Thus, the claimant is

entitled to a further sum of Rs.56,960/- towards compensation.

7. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.56,960/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz., 2091 days, as ordered in C.M.Application No.177 of 2015.

Sd/-P.B.SURESH KUMAR, JUDGE.

Kvs/-

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PATO JUDGE.