

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. 207 of 2007 ()

AGAINST THE AWARD IN OPMV 1247/1999 of IST ADDL.M.A.C.T,
KOZHIKODE DATED 24-03-2006

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APPELLANT/PETITIONER IN OP (MV):

U.P.ABDUL RASHEED, S/O. MUHAMMED,
AGED 31 YEARS, RESIDING AT ULLATTAMPOYIL HOUSE,
P.O. PUTHOOR VIA, KODUVALLY, KOZHIKODE.

BY ADV. SRI.A.V.M.SALAHUDEEN

RESPONDENT(S)/RESPONDENTS IN OP(MV):

1. N.K.HASSAN, S/O. MAMMUKOYA,
RESIDING AT VEYAM VEETIL HOUSE, 2/126, PARAMBATHUKAVU,
KODUVALLY, KOZHIKODE.

2. ORIENTAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, JASEELA COMPLEX, NILAMBUR ROAD,
MANJERI., (INSURER OF THE JEEP NO.KL-10 F 6584)

R1 BY ADV. SRI.V.G.ARUN
R1 BY ADV. SRI.T.R.HARIKUMAR
R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

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

M.A.C.A.No.207 of 2007

Dated this the 3rd day of September, 2015.

JUDGMENT

Harilal, J.

The appellant is the petitioner in O.P(MV) No.1247/99 on the files of the Motor Accidents Claims Tribunal, Kozhikode. This appeal is filed mainly on the ground that the compensation granted to him for the injuries sustained in a motor traffic accident is inadequate, being disproportionate with the severity of the injuries.

2. According to the appellant, on 21.3.1999 at about 12 noon, he was riding a motorcycle bearing Registration No.KL-11/G-8144 through Kozhikode-Wayanad road, and when he reached at Padanilam Junction, a jeep bearing Registration No.KL-10/F-6584 driven by one Mohammed Haneefa, owned by the 1st respondent and insured with the 2nd respondent, came from the opposite side in a rash and negligent manner

and knocked him down and as a result of the said accident, he had sustained severe injuries and heavy damages. At the time of accident, the claimant was aged 25 years and he was on leave from Saudi Arabia, where he was working in a Mosque as "Mukri". According to him, the accident was the result of rashness and negligence on the part of the driver of the jeep and the 1st respondent is vicariously liable for the same. The 2nd respondent is sought to be made liable to indemnify the 1st respondent.

3. The 2nd respondent has filed written statement admitting the policy coverage of the jeep; but denying the liability to pay compensation, as claimed in the petition. The evidence consists of Exts.A1 to A9 only and no oral evidence was adduced by the appellant. On appraisal of the evidence, the Tribunal passed the impugned award, granting an amount of Rs.1,18,500/–, though the appellant had claimed Rs.5 lakhs as compensation.

4. The learned counsel for the appellant advanced arguments contending that the Tribunal went wrong in

fixing the monthly income of the appellant. According to him, Rs.15,000/- was given as loss of income, without considering his earning capacity and age at the time of the accident. Similarly, the quantum of compensation determined under various heads are inadequate and disproportionate with the severity of the injuries. The learned counsel cited the decision reported in Syed Sadiq, etc. v. Divisional Manager, United India Insurance Company [2014 (2) SCC 735] and contended that the Tribunal ought to have fixed the income at least at Rs.4,500/- per month.

5. Per contra, the learned counsel appearing for the 2nd respondent submits that the quantum of compensation has been determined, on the basis of the evidence available on record, in its correct perspective. According to the learned counsel, in the absence of any evidence to establish the monthly income of the appellant, the Tribunal can be justified in granting Rs.15,000/- in lump sum. It is also contended that the quantum of compensation has been determined under various heads in accordance with the

severity of the injuries, duration of treatment, expenditure of treatment, purchase of medicine, etc. In short, according to the learned counsel, there is no scope for any further enhancement under any of the heads under which the amount has been fixed by the Tribunal.

6. In view of the submissions made at the Bar, the only question to be considered is, whether the appellant is entitled to get enhancement of compensation. At the outset, we notice that no oral evidence has been adduced by the appellant to substantiate his contention, particularly, regarding the monthly income which he claimed. Though he was stated as employed abroad in a Mosque, no evidence has been adduced to substantiate such employment abroad and also to prove that he was 26 years only at the time of accident.

7. Having regard to the said facts, the Tribunal has granted a lump sum of Rs.15,000/- in the absence of any evidence, either oral or documentary. We are of the opinion that the Tribunal can be justified in

determining the quantum of compensation for the loss of income in the absence of any contra evidence.

8. Coming to the compensation for pain and sufferings, it is seen that the appellant had underwent hospitalisation for a total period of 96 days. He had oblique wound on the left patella 5x3 cm. in size and another wound 6 x10 cm. on the leg, and the muscle and bone were exposed. He had another wound 3 x 4 cm. in front of ankle, and tendon was exposed. As per X-Ray, he had fracture on shaft of femur and fracture on both legs. At first, he was admitted in the Medical College Hospital on 21.3.1999 and he had taken treatment till 5.5.1999. Even though he was discharged on that day, thereafter, he had undergone hospitalisation for different periods upto 26.10.2000. Having regard to the long continuous treatment and the severity of the pain which he had suffered, we are of the opinion that the quantum of compensation determined for pain and sufferings deserves to be enhanced to Rs.30,000/-. Therefore, in that account, he is entitled to get an additional compensation of Rs.5,000/-. Needless to

say, he has sustained loss of amenities– comforts of a normal human being– and in that account, the quantum of amount determined under the said head deserves to be enhanced to Rs.25,000/– and thereby he is entitled to get an additional compensation of Rs.15,000/– also under this head. Thus, the appellant is entitled to get an additional compensation of Rs.20,000/– and he is also entitled to get interest @ 8% per annum from the date of filing the appeal till realisation of the compensation. The 2nd respondent is directed to deposit the entire amount of compensation within a period of one month from the date of receipt of a copy of the judgment.

This appeal is disposed of as above.

Sd/–

P.R. RAMACHANDRA MENON, JUDGE

Sd/–

K. HARILAL, JUDGE

okb.