

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

MACA.No. 206 of 2015 ()

AGAINST THE AWARD IN OPMV 1/2011 of MACT MUVATTUPUZHA DATED 06-08-2014

APPELLANT(S)/PETITIONER:

BASHEER O.S.

S/O., MUSTHAFI, RESIDING AT OLICKAL HOUSE
VELACHIRA, MANIKINAR, NELLIMATTOM
OTHAMANGALAM

BY ADVS.SMT.ANEY PAUL

SRI.PHILIP J.VETTICKATTU

RESPONDENT(S)/RESPONDENTS:

1. JABAR

S/O.MUHAMMED, KADAKKEKARA HOUSE, NELLIMATTOM
KOTHAMANGALAM PIN - 686691

2. THE BRANCH MANAGER

THE ORIENTAL INSURANCE CO. LTD
KOTHAMANGALAM PIN - 686691

R2 BY ADV. SRI.TITUS MANI

BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 02-09-2015, 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. 206 of 2015

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Dated, this the 2nd day of September, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a road traffic accident occurred on 08.08.2010 made him to approach this Court by filing this appeal.

2. The appellant was travelling as a passenger in an autorikshaw bearing No. KL 44 5529 on 08.08.2010 owned and driven by the first respondent. By about 6 p.m., the autorikshaw, by virtue of the alleged rashness and negligence on the part of the driver, overturned causing serious injuries to the appellant, which was sought to be compensated by filing the claim petition. The first respondent remained ex-parte. The claim was resisted by the Insurance Company by filing written statement. No oral evidence was adduced from either side. The documentary evidence consists of Exts. A1 to A8 produced from the part of the appellant and Ext. B1 copy of the policy produced by the Insurance Company. The disability

got certified as per Ext. C1 issued from the Government Medical College, Alappuzha. Based on available materials on record, the Tribunal awarded a total compensation of Rs.3,32,569/- under various heads, which was directed to be satisfied with interest @ 8% p.a. from the date of filing the petition i.e. 01.01.2011 till realization with proportionate costs. According to the appellant this amount is thoroughly inadequate, hence sought to be enhanced.

3. Heard the learned counsel for the appellant at length.

4. The learned counsel for the appellant submits that the appellant is a general worker and was having an income of Rs.6000/- per month at the time of accident. But the Tribunal reckoned only Rs.4,000/- as the income and worked out compensation accordingly. It is stated that the compensation for the disability awarded by the Tribunal at Rs.1,63,200/- requires to be modified, considering the extent of disability. Hence the appeal.

5. After analysing the evidence on record, particularly Exts.A1 to A4 documents, the Tribunal observed that the accident was occurred due to the rash and negligent driving of the first respondent. The Tribunal also observed that the available

materials on record clearly indicated the age of the claimant as above 60 years, particularly taking note of the entries in Exts.A1,A2 and A6; and the proper multiplier to be applied was '5'. It is also observed in the Award that no material was produced by the claimant either to prove the monthly income or as to the alleged age of 50 years, more so, when Ext. A7 'Adhar' card obtained during the pendency of O.P. did not contain the date of birth of the petitioner/claimant. The amount awarded by the Tribunal under various heads, as discernible from paragraph 12 of the Award, are in the following terms :

<u>Head</u>	<u>Amount claimed (Rs.)</u>	<u>Amount awarded (Rs.)</u>
Loss of earnings	50000	40000
Pain and sufferings	100000	45000
Loss of amenities	100000	35000
By stander expenses	5000	2400
Extra nourishment charges	10000	2000
Transportation charges	5000	1000
Medical treatment charges	50000	43969
Compensation for permanent disability	500000	163200
Total		332569

6. Admittedly, the appellant did not mount the box to establish the facts and figures, either with respect to the alleged

monthly income or as to the age of the appellant. The Tribunal decided the issue based on available materials on record. The question is, whether the Tribunal has gone wrong in adopting the multiplier as '5', based on the available materials, particularly Exts.A1, A2 and A6, which cannot but be answered in the negative.

7. Similarly, coming to the question of monthly income, it is true that the claimant cannot be expected to adduce any documentary evidence, when he is a general worker, as observed by the Apex Court in the decision reported in **(2014) 2 SCC 735 [Syed Sadiq and Ors. Vs. Divisional Manager, United India Insurance Company Ltd]**. The point to be considered is, whether a reasonable approach has been made by the Tribunal in this regard. As mentioned already, the Tribunal, even in the absence of any evidence, either oral or documentary, chose to accept Rs.4,000/- as the monthly income of a person aged above 60 years and worked out compensation accordingly, in respect of the alleged permanent disability. We do not find any illegality or impropriety or arbitrariness in such exercise. Considering the entire facts and circumstances, the amount awarded by the Tribunal under other heads are also quite adequate. We find that

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: 5 :

a conscious decision has been taken by the Tribunal as to the just compensation payable to the victim, as envisaged under Section 168 of the Motor Vehicles Act. We do not find any reason to call for interference. Interference is declined and the appeal is dismissed as devoid of any merit.

sd/-

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

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge