

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

MACA.No. 292 of 2007 ()

AGAINST THE AWARD IN OPMV 952/2003 of MACT PALA DATED 26-09-2006

PETITIONER/APPELLANT:

GEORGE CYRIAC
MOOZHUKUZHIIYIL HOUSE, KALATHOOKADAVU P.O.
MEENACHIL TALUK, MOONNILLAVU VILLAGE
KOTTAYAM DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT/RESPONDENTS

1. SIBY THOMAS , S/O THOMAS,
KUTTIYANICKAL HOUSE, PARAPPALLY BHAGOM, PALA KARA
POOVARANY VILLAGE.
- * 2. AUGUSTINE K.J., KUTTIYANICKAL HOUSE,
KIZHAPARAYAR P.O. PALA.[DELETED]
3. THE NATIONAL INSURANCE CO.LTD.,
REPRESENTED BY THE BRANCH MANAGER
PATHANAMTHITTA BRANCH.

*[RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT AS PER ORDER DATED 11.03.2015 IN IA 788/15.]

R3 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.292 of 2007

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Dated this the 8th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(MV).No.952 of 2003 on the file of the Motor Accidents Claims Tribunal, Pala. By award passed on 26.09.2006, the Motor Accidents Claims Tribunal awarded the sum of ₹69,110/- as compensation to the claimant under various heads and directed the third respondent insurer to deposit the said amount with interest at 7.5% per annum from the date of petition (28.11.2003) till the date of deposit along with costs quantified at ₹1,725/-. The claimant has, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

2. The appellant contended that while he was riding a motor bike bearing registration No.KL-5F/6477 along the Pala-Erattupetta road, it was knocked down by the jeep driven by the first respondent in a rash and negligent manner. He contended that in that accident he sustained injuries and had to undergo treatment at Medical College Hospital, Kottayam and later at Mata Hospital, Thellakom. The second respondent is the owner of the jeep and the third respondent is its insurer. The owner and driver did not enter appearance and they were set ex-parte. The third respondent entered appearance and filed a written statement contending that the accident took place on account

of the negligence of the claimant. The third respondent also denied and disputed the averments in the claim petition as regards the employment and annual income of the appellant. The claimant had, besides filing O.P.(MV).No.952 of 2003 filed O.P.(MV).No.473 of 2004 claiming compensation for the damage caused to his motor bike. The claim petitions were tried jointly. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on either side. On the side of the claimant, Exts. A1 to A9 were produced and marked. The Motor Accidents Claims Tribunal considered the rival contentions and held that accident took place on account of the negligence of the first respondent. The Tribunal thereafter awarded the sum of ₹69,110/- as compensation under various heads and directed the third respondent insurer to deposit the said amount with interest and costs. As stated earlier, the claimant has, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

3. We heard Sri. Anil Abey Jose, learned counsel appearing for the appellant and Sri. M.A. George, learned counsel appearing for the third respondent. We have also gone through the pleadings and the materials on record. The appellant had contended before the Tribunal that he was employed as a Conductor and was earning a monthly income of ₹6,000/-. He did not however produce the Conductor's licence or badge. The Tribunal therefore held that no evidence has been adduced by the appellant to prove his avocation or income. In

that view of the matter, the Tribunal notionally fixed his income as ₹2,000/- per mensem and on the ground that he was disabled from doing any work, for a period of two months, awarded the sum of ₹4,000/- as compensation for loss of earnings. The appellant had besides other documents produced Ext.A5, a certificate issued by the Senior Lecturer in Orthopedics, Medical College, Kottayam, to prove that he has 12% permanent disability. The Tribunal accepted the said certificate and awarded compensation for permanent partial disability taking ₹2,000/- as the multiplicand and 11 as the multiplier. The Tribunal also awarded the sum of ₹3,000/- for loss of amenities, ₹10,000/- towards pain and suffering, ₹1,000/- towards expenses for the bystander, ₹250 for transport to hospital, ₹250/- for extra nourishment and ₹250/- towards damage to clothing. The Tribunal also awarded the sum of ₹18,680/- covered by Ext.A7 series of medical bills under the head medical expenses.

4. The contention that the appellant/claimant was a Conductor and was earning a monthly income of ₹6,000/- was disputed by the third respondent insurer. The appellant therefore ought to have produced his Conductor's licence and badge to prove that he was employed as a Conductor. As a Conductor, he would have also been employed under a stage carriage operator. The appellant could have produced documentary evidence to prove his avocation and income. In such circumstances, the Tribunal cannot be faulted for not accepting

his plea that as a Conductor he was earning an income of ₹6,000/- per mensem. However, for that reason alone it cannot be said that he was earning only the sum of ₹2,000/- per mensem. It is now well settled by a series of decisions of the Apex Court and this court that even in the case of a non earning house wife, the multiplicand to be adopted is ₹4,500/-. In such circumstances we are of the opinion that the Tribunal ought to have taken his monthly income as ₹4,500/- for the purpose of computing the loss earnings for a period of two months and also for awarding compensation under the head permanent partial disability. Computed on that basis, the appellant will be entitled to ₹9,000/- as compensation towards loss of earnings for a period of two months in the place of ₹4,000/- awarded by the Motor Accidents Claims Tribunal. We accordingly award a further sum of ₹5,000/- under the head loss of earnings for a period of two months.

5. Likewise, the compensation to be awarded under the head permanent partial disability will be $\text{₹}4,500/- \times 12 \times 11 \times 12/100 = \text{₹}71,280/-$. The Motor accidents Claims Tribunal has awarded only the sum of ₹31,680/- under that head. Consequently he will be entitled to a further sum of ₹39,600/- as compensation for permanent partial disability. The petitioner had suffered fracture of the right wrist and fracture of the clavicle. He had also undergone treatment as an in-patient in two hospitals for a total period of eight days. Having regard to the nature of the injuries, we are of the opinion that the Tribunal

ought to have awarded the sum of ₹15,000/- as compensation for pain and suffering. Likewise, for loss of amenities, we are of the opinion that the Tribunal ought to have awarded the sum of ₹5,000/-. We accordingly award a further sum of ₹5,000/- as compensation for pain and suffering and a further sum of ₹2,000/- as compensation for loss of amenities. The compensation awarded under other heads does not merit any interference.

We accordingly hold that the appellant/claimant is entitled to receive a further compensation of ₹39,600/- + ₹5,000/- + ₹5,000/- + ₹2,000/- = ₹51,600/-. The third respondent insurer shall deposit the said amount together with interest at 9% per annum from the date of petition till the date of deposit within two months from today. The amount thus deposited shall be disbursed to the appellant. No costs.

sd/-

**P.N.RAVINDRAN
JUDGE**

sd/-

**ANU SIVARAMAN
JUDGE**

kp/-

True copy

P.A.To Judge