

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

MACA.No.282 of 2015 ()

**AGAINST THE AWARD IN OPMV 1783/2010 of ADDL. MACT, EKM
DATED 23-09-2014**

APPELLANT(S):

**SUNIL SOMAN, AGED 35 YEARS
S/O SOMAN, SOPANAM HOUSE,
PARAMBUZHA THATTASSERIKARA,
VIJAYAPURAM VILLAGE, KOTTAYAM DISTRICT.**

BY ADV. SRI.V.A.OMANAKUTTAN

RESPONDENT(S) :

**NATIONAL INSURANCE CO. LTD
1ST FLOOR, MUNICIPAL SHOPPING COMPLEX,
MAIN ROAD, NORTH PARAVUR 683 513.**

BY ADV. SRI.P.K.MANOJ KUMAR,SC,NATIONAL INSURANCE CO. LTD.

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-05-2015, THE COURT ON 29-05-2015 DELIVERED THE FOLLOWING:**

VS

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
= = = = =
M.A.C.A.No.282 of 2015
= = = = =
Dated this the 29th day of May, 2015

JUDGMENT

Anu Sivaraman, J.

This appeal arises from the Award dated 23.09.2014 passed the Additional Motor Accident Claims Tribunal, Ernakulam in O.P.(MV) No.1783 of 2010. The claimant who is the appellant challenges the award and seeks enhancement of the compensation granted by the Tribunal.

2. The motor accident in question occurred on 19.06.2010 when the motorcycle bearing registration No.KL-5-E 5006 on which the appellant was riding pillion was hit by a jeep bearing registration No. KL-09-A-2169 driven in a rash and negligent manner by the first respondent before the Tribunal. The claimant was thrown off the bike and he sustained serious injuries including fractures in his right forearm and right leg. He was initially taken to the Vijaya Kumara Menon Hospital, Tripunithura and later to the Caritas Hospital, Kottayam, where he was treated as an in patient for 9 days. The claim petition was filed seeking a compensation of ₹4,50,000/-. The driver and the owner of the offending jeep remained ex parte. The Insurance

Company filed a written statement admitting the Insurance Policy as also the accident, but alleging negligence on the part of the appellant and disputing the injuries and the quantum of compensation.

3. The Tribunal found that the jeep was driven in a rash and negligent manner causing the accident and that the vehicle was covered by a comprehensive policy. The appellant was aged 29 at the time of the accident going by his age proof and he claimed that he was working as a Junior Engineer in Nagarjuna Construction Company Limited, Info Park, Kochi and drawing salary of ₹22,000/- per month. The injuries sustained by him were fracture of both bones of the right leg and fracture of both bones of the right forearm, which were proved by Ext.A6 accident cum wound certificate and Ext.A7 discharge summary. 5% permanent disability was assessed by the Medical Board. The Tribunal found that though the appellant had claimed to be a Junior Engineer in Nagarjuna Construction Company Ltd earning ₹22,000/- per month, no documentary evidence has been adduced to prove his employment or income. Therefore, his monthly income was notionally fixed as ₹4,000/- only. Taking a multiplier of 18 and considering the disability of 5%, an amount of ₹43,200/- was granted towards compensation for disability. Six months loss of earnings was

also found by the Tribunal, but taking the income notionally as ₹4,000/-, only ₹24,000/- was awarded. A total amount of ₹1,82,010/- was awarded by the Tribunal as compensation under various heads.

4. It is seen that though the appellant had produced certificates showing his qualifications and Ext.A10 salary certificate, the said salary certificate was not proved by him by examining his employer or anyone competent to give evidence in that behalf. However, Annexure A15 account statement issued by ICICI Bank and produced by the appellant, shows the periodical payments to the petitioner's account by Nagarjuna Construction Company Ltd. The amounts are not credited on a monthly basis and fluctuate between ₹9,584 in April 2008 to ₹22,395/- in April 2009. However, the Tribunal held that no document or evidence has been adduced to prove the appellant's employment or income. Therefore, his monthly income was considered as ₹4,000/- notionally by the Tribunal.

5. The finding of the Tribunal to the effect that there are no documents adduced to prove the monthly income of the appellant cannot be countenanced in view of Annexure A15 series, account statements produced by him. Even if the income of the appellant, at the time of the accident, is taken at an average of ₹14,000/- per

month he would be entitled to claim a much higher amount as compensation for loss of earnings and compensation for disability. The actual loss of earnings, which has been assessed by the Tribunal for six months would then stand increased to ₹84,000/- as against ₹24,000/- now granted. Further, the compensation for disability would be $₹14,000 \times 12 \times 18 \times 5 / 100 = ₹1,51,200/-$ which would entitle him to an enhancement of ₹1,08,000/- from ₹43,200/- now granted as compensation. It is evident that the claimant had been hospitalised for 9 days in Caritas Hospital, Kottayam and had suffered fractures in both his right arm and right leg.

6. Since the accident was found to have occurred as a result of rash and negligent act of the driver of the offending vehicle, we are of the opinion that ₹50,000/- claimed by the appellant towards pain and suffering should be allowed in full, instead of the ₹35,000/- awarded by the Tribunal. The appellant is thus held to be entitled to a total enhanced compensation of ₹1,83,000/- (Rupees One Lakh Eighty Three Thousand only) over and above the sum of ₹1,82,010/- awarded by the Tribunal.

We accordingly allow the appeal and on modification of the impugned award, award an additional compensation of ₹1,83,000/-

(Rupees One Lakh Eighty Three Thousand only) to the appellant claimant over and above the compensation awarded by the Motor Accidents Claims Tribunal. The respondent insurer is directed to deposit in the Motor Accident Claims Tribunal, Ernakulam for payment to the appellant the said sum of ₹1,83,000/-(Rupees One Lakh Eighty Three Thousand only) together with interest at the rate of 9% per annum on the said sum from the date of the petition till the date of realisation. Such deposit shall be made within two months from today. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj