

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 303 of 2007 ()

AGAINST THE AWARD IN OPMV 336/2000 of MACT, IRINJALAKUDA DATED
23-06-2006

APPELLANT/PETITIONER:

JOJU.P.G., S/O GEORGE,
PEREPPADAN HOUSE, ALOOR P.O., NEAR CANAL PALAM
ALLOOR.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

- *1. C.MURUGAN, S/O CHELLA MUTHU,
CHINNA MARIAMMAN KOVIL, ERIKARAI
KANNAKURICHI MAIN ROAD, SALEM. (DELETED)
- *2. V.PALANIAPPAN, S/O.VAIYAPURI,
1/125 A, VANNIYA NAGAR, SALEM-1. (DELETED)
- 3. THE BRANCH MANAGER,
UNITED INDIA INSURANCE CO.LTD., SALEM-1.

R,R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R,R3 BY ADV. SRI.P.JACOB MATHEW

*RESPONDENT NOS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE APPELLANT AS PER ORDER DATED 24.3.2015 IN
I.A.NO.1160/15 IN MACA NO.303/07

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & K. ABRAHAM MATHEW, JJ.

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M.A.C.A. No.303 of 2007

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Dated this the 1st day of September, 2015

JUDGMENT

K.Abraham Mathew, J.

The appellant was travelling in a car bearing registration No.TN-04/Z 7454 along the Salem-Coimbatore public road, when it hit a person and turned turtle. In the accident he sustained serious injuries. He was treated at hospital in Kerala as well as in Tamil Nadu. He sustained fracture of the bones as well as other injuries. The accident has caused him permanent disability. On these allegations he filed O.P (MV)No.336 of 2000 on the file of the Motor Accidents Claims Tribunal, Irinjalakkuda, claiming ₹9,63,000/- as compensation. The first respondent was the driver of the vehicle involved in the accident, the second respondent the owner and the third respondent the insurer. The Tribunal found that the accident happened due to the negligence of the first respondent and the appellant is entitled to get ₹7,43,895/- as compensation. The third respondent insurer was directed to pay the amount with interest at the rate of 6% per annum. The appellant is not satisfied with the compensation.

2. We heard learned counsel appearing for the appellant and the third respondent.

3. There is no dispute that the accident was the result of the negligence of the first respondent. In this appeal we are only concerned with the compensation payable to the appellant. It is seen from Ext.A1, Exts.A2, A3 and A7 discharge cards and wound certificate that the appellant sustained very serious injuries. He sustained fracture of the shaft of the right femur. He was first treated at Gokulam Hospital, Salem and thereafter at Kovai Medical Centre and St.James Hospital at Chalakkudy. The total period during which he was treated as in-patient was 89 days. There was a bucket handle tear of the lateral meniscus of the right knee. He underwent lateral meniscectomy. It is seen from Ext.A9 disability certificate issued by Dr. R Vijayakumar, Associate Professor and Orthopaedic surgeon of Medical College Hospital, Thrissur that after the accident, the appellant developed bed sores and now it is difficult for him to sit on hard surfaces because of recurring ulcers of scars. Because of the fracture of the femur, he has permanent disability. The whole body disability is fixed at 18%.

4. There is no dispute with regard to the amount awarded under the head medical expenses. Under the head extra nourishment and bystander's expenses the appellant was given ₹8,100/- and under the head transport to hospital, ₹3,000/-. ₹15,000/- was awarded under

the head pain and suffering and ₹5,000/- under the head loss of amenities. We have no doubt that the amounts awarded under the above heads are not at all reasonable. For permanent disability, the compensation was fixed at ₹16,200/- which also does not appear to be reasonable.

5. Learned counsel submits that as the permanent disability has been fixed at 18%, the appellant should have been awarded reasonable amount under the head loss of earning capacity. Admittedly, he was a Bank employee and he continued to be in service even after the accident. There may be cases in which permanent disability may result in loss of earnings and may not result in loss of earnings. The distinction has been discussed in **Raj Kumar v. Ajay Kumar** (2011 (1) KLT 620 (SC)). As the appellant's earning capacity was not affected by the accident, we are of the view that the learned Tribunal rightly refused to award him any amount under the head loss of earnings.

6. As mentioned earlier, the amounts awarded under various heads require reconsideration. For pain and suffering at least ₹50,000/- and for loss of amenities ₹25,000/- and for transport to hospital ₹20,000/- and for extra nourishment and bystanders expenses ₹30,000/- should have been awarded. Having regard to the facts of the

case and the fact that the accident happened about 15 years ago, we are inclined to award an additional amount of ₹1,25,000/- as compensation with interest at the rate of 7% per annum on the said amount.

In the result, this appeal is allowed in part. The third respondent is directed to pay the appellant ₹1,25,000/-(Rupees One lakh twenty thousand only) with interest at 7% per annum from 29.03.2000 till payment on the said amount. On deposit of the amount, the appellant is entitled to withdraw the whole amount.

**P.N.RAVINDRAN
JUDGE**

**K. ABRAHAM MATHEW
JUDGE**

kp/-