

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

MACA.No. 289 of 2015 ()

OPMV.1733/2004 OF PRL. MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE.

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APPELLANT/PETITIONER:

**VIBISH,S/O.BALAN,
AGED 33 YEARS, PUNNANTHOOR HOUSE,
PARAKOTUTHAZHE, (PO) PERUMANNA,
KOZHIKODE.**

BY ADV. SMT.K.V.RESHMI.

RESPONDENT/2ND RESPONDENT:

**THE NATIONAL INSURANCE CO. LTD.,
BRANCH OFFICE, KORAMBAYIL ARCADE,
PANDIKKAD ROAD, MANJERI-673 121.**

**BY ADVS. SRI.P.JACOB MATHEW.
SRI.M.A.GEORGE.**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

MACA.No. 289 of 2015

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE A CERTIFIED COPY OF THE FINAL REPORT IN C.C. NO.804/2004
ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KUNNAMANGALAM DATED 31/07/2014.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

P.B.SURESH KUMAR, J.

M.A.C.A.No.289 of 2015

Dated this the 11th day of June, 2015

JUDGMENT

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The claimant was a contractor. The accident took place on 30.7.2004. The claimant was aged 23 years at the time of accident. The accident occurred on account of the collision of two jeeps bearing Reg.Nos.KL.2/B-8586 and KL-10/E-3042. The claimant was travelling in the jeep bearing Reg.No. KL.2/B-8586. It is alleged in the claim petition that the accident occurred on account of the negligence of the driver of the jeep bearing Reg.No. KL-10/E-3042. The Tribunal found that the accident occurred on account of the negligence of the drivers of both the vehicles. In so far as the claimant had not impleaded the owner and driver of the

jeep in which he was travelling, the Tribunal took the view that the claimant can be permitted to recover only one half of the compensation determined as due to him. The total compensation determined as due to him by the Tribunal is Rs.19,630/- and in the light of the said view, the Tribunal directed the insurer of the jeep bearing Reg.No. KL-10/E-3042 to pay to the claimant a sum of Rs.9,815/- alone. The claimant is aggrieved by the said decision of the Tribunal.

3. Heard the learned Counsel for the claimant and the learned senior Counsel for the second respondent, the insurer of the jeep bearing Reg.No. KL-10/E-3042.

4. As noticed above, the Tribunal found that the accident occurred on account of the negligence of the drivers of both the jeeps involved in the accident. As such, it is a case of composite negligence and the drivers of the vehicles involved in the accident are joint tort feasons. In **Khenyei vs. New India Assurance Co.Ltd and others** (2015(2) KLJ 593) the Apex Court held that in the case of

composite negligence, the claimant is entitled to sue both the joint tortfeasors or anyone of them and recover the entire compensation as liability of the joint tortfeasors is joint and several. In the light of the said decision of the Apex Court, the finding of the Tribunal that the claimant is entitled to only one half of the compensation determined as due to him is unsustainable.

5. Ext.A2 is the copy of the wound certificate issued to the claimant from the Medical College Hospital, Calicut. It is seen from Ext.A2 that the claimant sustained fracture of patella. A copy of the claim petition which was made available to me at the time of hearing indicates that the claimant was admitted and treated as inpatient in the hospital for three days, viz., from 30.7.2004 to 3.8.2004. It is seen that the Tribunal granted only a sum of Rs.3500/- towards loss of earnings. Since the accident took place in the year 2004, I am of the view that the claimant is entitled to loss of earnings for a period of one month, reckoning his

monthly income at Rs.5,000/-. The claimant is, therefore, entitled to a further sum of Rs.1,500/- towards compensation for loss of earnings. Only a sum of Rs.5,000/- is seen granted towards pain and sufferings. Having regard to the injury sustained by the claimant, I am of the view that he is entitled to a further sum of Rs.5,000/- towards pain and sufferings. Likewise, only a sum of Rs.5,000/- is seen granted towards loss of amenities. Having regard to the fact that the claimant sustained fracture of patella, I am of the view that some more amount should have been granted to him towards loss of amenities. On an evaluation of the materials on record, I fix the further compensation to be granted to the claimant on that head at Rs.2,500/-. No compensation is seen granted towards extra nourishment. According to me, on the facts of this case, the claimant is entitled to a sum of Rs.2,500/- towards extra nourishment as well. Thus, the claimant is entitled to a further sum of Rs.11,500/- towards compensation.

6. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed. The direction in the award that the claimant is entitled to only one half of the compensation determined as due is vacated. The claimant is also granted a further sum of Rs.11,500/- towards additional compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz., 2102 days as ordered in C.M.Application No.326 of 2015.

P.B.SURESH KUMAR, JUDGE.

smm