

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

MACA.No. 383 of 2015

**OPMV 1759/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE
DATED 10-11-2009**

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APPELLANT(S)/PETITIONER:

**K.MUHAMMED, AGED 38 YEARS,
S/O. IBRAHIM, RESIDING AT KARATTIL HOUSE, P.O.MADAVOOR,
PALLITHAZHAM, C.M.MAGHAM (NEAR), KOZHIKODE.**

**BY ADVS.SRI.V.S.CHANDRASEKHARAN
SMT.LEKSHMI SWAMINATHAN**

RESPONDENT(S)/RESPONDENT:

**ORIENTAL INSURANCE COMPANY,
DIVL. OFFICE SEEMA BUILDING, G.H.ROAD,
KOZHIKODE - 673 001.**

**R1 BY ADVS. SRI.M.JACOB MURICKAN
SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 07-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

msv/

MACA.No. 383 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A1: MEMO DTD.27.5.2014 ISSUED BY ADV. RASHMI K.V. TO
SRI.SANTOSH KUMAR K.P., ADVOCATE CLERK.**

**ANNEXURE A2: REPLY ISSUED BY SRI.SANTOSH KUMAR K.P. ADVOCATE CLERK
DTD.30.5.2014.**

**ANNEXURE A3: LETTER ISSUED TO SRI.ANIL THOMAS ADVOCATE BY
ADV. RASHMI K.V. DTD.2.6.2014.**

**ANNEXURE A4: MEMO ISSUED BY ADV. ANIL THOMAS TO SRI.SANTOSH KUMAR K.P.,
ADVOCATE CLERK DTD.3.6.2014.**

**ANNEXURE A5: LETTER ISSUED BY ADV. ANIL THOMAS TO THE REGISTRAR HIGH
COURT OF KERALA DTD.4.6.2014.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.B.SURESH KUMAR, J.

M.A.C.A.No.383 of 2015

Dated this the 7th day of July, 2015

JUDGMENT

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

2. The accident took place on 21.3.2007. The claimant was the cleaner in a lorry. He was aged 38 years at the time of accident. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.46,865/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. The claimant sustained a crush injury on his right hand in the accident. He had also sustained fracture of right femur. Ext.A2 is the wound certificate and Ext.A3 is the discharge summary showing that the claimant was undergoing inpatient treatment in the hospital from 21.3.2007 to 29.3.2007. The Tribunal found that the claimant had undergone a surgical procedure also in the course of his treatment on 26.3.2007. The Tribunal further found that the claimant had to amputate his right middle finger on account of the injury sustained by him. The compensation due to him is to be determined having regard to the said injuries caused to the claimant in the accident.

5. As noticed above, the accident took place in the year 2007. Nevertheless, only a sum of Rs.2,000/- is seen awarded towards loss of earnings, reckoning the monthly income of the claimant at Rs.2,000/-. Since the accident took place in the year 2007, I am of the view that the monthly income of the claimant should have been reckoned by the Tribunal at Rs.4,500/-. Since the claimant had suffered fracture of his femur, he could not have worked at least for a period of three months and as such, he is entitled to compensation for loss of earnings for

a period of three months. The claimant is therefore, entitled to a further sum of Rs.11,500/- on that head. Though the claimant had undergone inpatient treatment for a period of 9 days, only a sum of Rs.750/- is seen awarded towards bystander's expenses. Since the accident took place in the year 2007, according to me, the claimant is entitled to bystanders' expenses at the rate of Rs.250/- per day. The claimant is therefore, entitled to a further sum of Rs.1,500/- towards bystanders' expenses. Towards continuing permanent disability, the Tribunal granted a sum of Rs.26,880/- to the claimant, reckoning his disability at 7% and monthly income at Rs.2,000/- applying the multiplier as '16'. Since I have found that the monthly income of the claimant should have been reckoned at Rs.4,500/-, the claimant is entitled to a sum of Rs.60,480/- towards compensation for continuing disability. The claimant is, therefore, granted a further sum of Rs.33,600/- towards continuing permanent disability. Even in cases where compensation is granted towards continuing permanent disability, a nominal amount is to be granted towards loss of amenities and enjoyments in life. Having regard to the facts of this case, I fix the compensation payable to the claimant

towards loss of amenities and enjoyments in life at Rs.5000/-.
Thus, the claimant is entitled to a further sum of Rs.51,600/-
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 in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.51,600/- to the claimant by way of 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., 1802 days as ordered in C.M.Application No.415 of 2015.

P.B.SURESH KUMAR, JUDGE.

smm