

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 454 of 2015

OPMV 1203/2004 OF PRINCIPAL MOTOR ACCIDENTS CLAIMS TRIBUNAL,KOZHIKODE.
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APPELLANT/PETITIONER:

**VABID, S/O.BEERANKOYA,
THOTTATHIL PARAMBA,
VADIYIL HOUSE (P.O), KALLAI,
KOZHIKODE.**

BY ADV. SMT.K.V.RESHMI

RESPONDENT/2ND RESPONDENT:

**NATIONAL INSURANCE CO. LTD.,
EM JAYS COMPLEX, BELINATTA,
MANGALORE - 575 001,
REPRESENTED BY ITS MANAGER.**

**BY ADVS. SMT.DEEPA GEORGE
SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 02-03-2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

mbr/

P.B.SURESH KUMAR, J.

M.A.C.A.No.454 OF 2015

Dated this the 2nd day of March, 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 claimant is a loading and unloading worker. The accident took place on 19.4.2004. The claimant was aged 30 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.10,000/- 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. Ext.A2 is the wound certificate issued to the claimant from Government General Hospital, Kozhikode. In Ext.A2 the injuries noted are only abrasion on upper lip, pain on knee and tooth ache. Ext.A4 is the discharge card which reveals that the claimant was admitted and treated as inpatient in the General Hospital for 16 days. Ext.A3 is the discharge card issued from MIMS hospital. A copy of Ext.A3 was made available to me. In Ext.A3, it is stated that the patient was admitted with complaints of pain and swelling in the right knee following a road traffic accident few months back. It is also stated in Ext.A3 that the claimant had medial joint line tenderness with painful restriction of flexion in the extremes. It is seen from Ext.A3 that the claimant underwent diagnostic arthroscopy and was found to have a partial AC tear in the mid substance.

5. Having regard to the trivial nature of the injuries noted in the wound certificate and having regard to the fact that the admission of the claimant at MIMS hospital was 2½ months after the accident, the Tribunal did not reimburse the medical expenses incurred by the claimant at MIMS hospital. Similarly, taking into account the nature of injuries noted in the wound certificate, the Tribunal did not grant any compensation reckoning the prolonged inpatient treatment in the

hospital. The Tribunal did not also accept the version of the claimant that he underwent a surgical procedure for the reason that he did not appear before the Tribunal to give evidence.

6. The fact that the claimant sustained injuries in a motor accident is not in dispute. As such, his right to claim just compensation for the injuries sustained by him cannot be denied or disputed. It is beyond dispute that the oral evidence of the claimants is not insisted now in the claim petitions filed before the Motor Accidents Claims Tribunals. As such, since the compensation payable to the claimant is limited to Rs.10,000/- for want of oral evidence and explanation for the doubts entertained by the Tribunal, I am of the view that the claimant has to be given a further opportunity to adduce evidence.

In the result, the impugned award is set aside. The Tribunal is directed to dispose of the claim petition afresh, after giving the claimant an opportunity to adduce further evidence in the matter. Parties are directed to appear before the Tribunal on 6.4.15.

P.B.SURESH KUMAR, JUDGE

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