

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

MACA.No. 479 of 2007 ()

AGAINST THE AWARD IN OPMV 2664/2001 of M.A.C.T.,KOTTAYAM DATED 17.6.2005

APPELLANT/PETITIONER:

**MAHADEVAN, THATTUPURACKAL THARAYIL
MUTHUKULAM THEKKU P.O., NEAR MAMMOODU JUNCTION
MUTHUKULAM VILLAGE, KARTHIKAPALLY, ALAPPUZHA.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.**

RESPONDENT(S)/RESPONDENTS:

- 1. MICHLE THOMAS, MULLARA HOUSE,
FATHIMAPURAM P.O. CHANGANACHERRY.**
- 2. THE ORIENTAL INSURANCE CO.LTD.,
CHANGANACHERRY.**

R2 BY ADV. SRI.P.JAYASANKAR

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

=====

M.A.C.A.No.479 of 2007

=====

Dated this the 16th day of September, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(M.V.)No.2664 of 2001 on the file of the Additional Motor Accidents Claims Tribunal, Kottayam. The appellant instituted O.P.(M.V.)No.2664 of 2001 claiming the sum of Rs.2,00,000/- as compensation for the injuries sustained by him in a motor accident that took place at about 2.30 a.m. on 15.7.2001. He had in the claim petition stated that while he was standing by the side of the road next to a workshop where the bus in which he was engaged as a cleaner was being repaired, a goods autorickshaw owned and driven by the first respondent and insured by the third respondent, came in a rash and negligent manner and hit him. He had in the claim petition stated that in that accident he sustained serious injuries and had to undergo treatment as an inpatient at Medical College Hospital, Kottayam during the period from 15.7.2001 to 24.7.2001. The appellant contended that thereafter also he had to undergo treatment and that on account of the injuries sustained by him, he was advised to take rest for four months. He had in the claim petition stated that he

was earning Rs.5,500/- per month from his work and the sum of Rs.1,000/- per month from agricultural operations. The appellant contended that the accident took place solely on account of the rash and negligent driving of the goods autorickshaw by the first respondent.

2. Though notice was served, the first respondent did not enter appearance and file a written statement, with the result, he was set ex-parte. The second respondent insurer entered appearance and filed a written statement admitting the fact that the goods autorickshaw, owned and driven by the first respondent, was validly insured by it at the relevant time. It however contended that the compensation claimed is exorbitant and excessive. Before the Motor Accidents Claims Tribunal, the claimant examined himself as PW1 and Exts.A1 to A11 were produced and marked on his side. On the side of the respondents, no evidence, oral or documentary, was adduced.

3. The Motor Accidents Claims Tribunal considered the rival contentions and held relying on some of the entries in Ext.A5 discharge card issued from Medical College Hospital, Kottayam, that the claimant was also responsible for the accident and that the accident could have been averted if the vehicle of which he was a cleaner was not repaired by parking it on the road. In that view of the matter, the Tribunal held

that only 75% of the liability can be fastened on the owner-cum-driver and the insurer of the goods autorickshaw. The Tribunal thereafter proceeded to award the sum of Rs.21,031/- as compensation under various heads and directed the second respondent insurer to deposit the said amount together with interest at 6% per annum and costs quantified at Rs.2,500/-. The claimant has, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

4. We heard Sri.Domson J. Vattakkuzhi, learned counsel appearing for the appellant and Sri.P.Jayasankar, learned counsel appearing for the second respondent insurer. We have also gone through the pleadings and the materials on record as also the lower court records. The claimant had in the claim petition averred that the accident took place while he was standing in front of the workshop where the bus in which he was working as a cleaner was being repaired. The same is the case set out in Ext.A1 F.I.R. which was registered a few days after the accident. However, relying on an entry in Ext.A5 discharge card issued from Medical College Hospital, Kottayam, the Tribunal held that the claimant was responsible for getting the vehicle repaired by parking it on the road and therefore, the entire liability cannot be fastened on the owner-cum-driver of the

goods autorickshaw. In our considered opinion, the said finding entered by the Tribunal is perverse and cannot be sustained. All that the claimant had stated before the Doctor who had treated him at Medical College Hospital, Kottayam, is that the accident took place while the vehicle was being repaired. Apart from the said document there is nothing to prove that the vehicle was being repaired while it was parked on the road. The consistent case set out by the claimant in the claim petition and spoken to by him when examined as PW1 was that he was standing by the side of the road adjacent to the workshop where the bus was being repaired. He had also admitted the fact that he had removed the four wheels of the bus so as to facilitate its repair.

5. The appellant/claimant was only a cleaner of the bus. He was not its driver or owner. He cannot in our opinion be blamed even assuming for the sake of arguments that the vehicle was repaired while it was parked on the road. The appellant who was only an employee of the stage carriage bus was not in our opinion in a position to insist that the vehicle should be repaired if at all it was to be repaired only inside the workshop. In any case, it was not his decision to carry out repairs to the bus while it was parked on the road. The appellant who is only a cleaner of the bus cannot in our opinion on the facts disclosed, be held liable to have contributed to the accident. We

are therefore of the considered opinion that the finding entered by the Tribunal that the appellant was guilty of contributory negligence cannot be sustained. We accordingly vacate the said finding.

6. That takes us to the question regarding the adequacy of the compensation awarded by the Tribunal. The medical records establish the fact that in the accident, besides fracture of the 5th and 6th ribs, the appellant had suffered a lacerated wound involving the left pinna which was cut through the cartilage upto the mastoid process. He had undergone treatment as an inpatient at Medical College Hospital, Kottayam during the period from 15.7.2001 to 24.7.2001. Thereafter also he had undergone treatment as an outpatient in the said hospital. It has come out in evidence that as a result of the accident he was disabled from attending to his work as a cleaner for about six months. The appellant had produced before the Tribunal as Ext.A10, a certificate issued by his employer to the effect that he was employed as a cleaner in a stage carriage bus and was being paid Rs.700/- per week as wages. On the short ground that Ext.A10 has not been properly proved, the Tribunal declined to accept and act on it and instead, awarded compensation for loss of earnings for a period of three months taking the monthly income of the appellant as Rs.1,500/-. Ext.A10 certificate discloses that the claimant was being

paid only Rs.700/- per week as wages. The claimant had when examined as PW1 admitted the fact that as a cleaner, he was being paid only for two weeks a month. He had also stated that besides wages, he was also being paid bata at the rate of 1% of the collection. Such being the situation, as the appellant was bound to work only for 15 days and was in a position to earn income by doing other sundry works on the rest of the days, we are of the opinion that the award of compensation for loss of earnings taking the monthly income as Rs.1,500/- is on the lower side. In our opinion, having regard to the ground realities, on a modest estimate, the monthly income of the appellant/claimant can be taken as Rs.3,000/- per month. It has come out in evidence that for a period of six months immediately after the accident he was disabled from doing any work. Computed on that basis the appellant/claimant is in our opinion entitled to be awarded the sum of Rs.18,000/- as compensation for loss of earnings. The Tribunal has by the impugned award awarded only the sum of Rs.4,500/- as compensation for loss of earnings. We accordingly award a further sum of Rs.13,500/- as compensation for loss of earnings.

7. The impugned award discloses that the Tribunal has awarded the sum of Rs.10,000/- towards pain and suffering and a likesum as compensation for loss of amenities. The medical evidence disclose

that besides fracture of the 5th and 6th ribs, the appellant had also suffered a deep injury on the left pinna besides other minor injuries. Having regard to the seriousness of the injuries sustained by him especially the fact that he had suffered a fracture of the 5th and 6th ribs, we are of the opinion that the compensation awarded under the head pain and suffering and under the head loss of amenities is liable to be enhanced. Having regard to the evidence on record and the period of hospitalization as also the fact that subsequent to the discharge on 24.7.2001 also the claimant had visited Medical College Hospital for treatment, we are of the opinion that the appellant/claimant should be awarded a further sum of Rs.10,000/- as compensation under the head pain and suffering and a likesum as compensation under the head loss of amenities and enjoyment of life. The compensation awarded under the other heads does not in our opinion call for any further enhancement.

We accordingly award to the appellant/claimant an additional compensation of Rs.33,500/- over and above the compensation awarded by the Motor Accidents Claims Tribunal. The second respondent insurer is directed to deposit the said amount together with interest at 9% per annum from the date of petition till the date of deposit within two months from today. Upon such deposit being

made, the amount deposited shall be released to the appellant/
claimant. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge

vpv