

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.N. RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

MACA.No. 86 of 2011 ()

AGAINST THE AWARD IN OPMV 2295/2003 of M.A.C.T., PERUMBAVOOR
DATED 06-02-2008

APPELLANT/PETITIONER:

BLESSON ANTONY, S/O. A.D. ANTONY,
ADVOCATE, AGED 39 YEARS, EDASSERY HOUSE
NEELESWARAM P.O.

BY ADVS. SRI. E.C. POULOSE
SMT. BOBBY RAPHEAL. C

RESPONDENT(S):

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1. THE MANAGER,
BRAHMANDODAYAM HIGH SCHOOL, KALADY
ERNAKULAM, PIN - 683 583.
 2. P.N. DEVADATHAN, S/O. NARAYANAN NAIR,
PUNNAKATTIL HOUSE, KALADY P.O., KALADY VILLAGE
MUTTOM, TAIKKATTUKARA P.O., ALUVA (VIA)-683 583.
 3. UNITED INDIA INSURANCE CO. LTD.,
JOS TRUST BUILDING, P.B.NO.3644, CHITTOOR ROAD
KOCHI-682 035.

R3 BY ADV. SMT. P.K. SANTHAMMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

M.A.C.A.No.86 of 2011

Dated this the 27th day of March, 2015

JUDGMENT

Anil K.Narendra, J.

The appellant is the petitioner in O.P.(MV)No.2295 of 2013 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. The said petition was filed under section 166 of the Motor Vehicles Act, 1988 against respondents 1 to 3 herein claiming compensation for the injuries sustained by the appellant in a motor accident that occurred on 28.3.2003. The first respondent is the owner of a school bus bearing registration No.KL-07/AL-7176 involved in the accident, which was driven by the second respondent. The third respondent is the insurer of the said vehicle.

2. The Tribunal by award dated 6.2.2008 concluded that the accident occurred due to the rash and negligent driving of the bus by the second respondent. The appellant was granted a total compensation of ₹54,620/- under different heads. Since the school bus was covered by a valid insurance policy during the relevant time, the third respondent-insurer was directed to produce a cheque for ₹2,373/- drawn in favour of the Tribunal towards the court fee and another cheque for the balance

amount of compensation together with interest at 7%per annum from the date of application till 30.6.2007 and thereafter at the rate of 7.5% per annum till realisation. Claiming enhanced compensation under different heads, the claimant is before us in this appeal.

3. We heard the arguments of the learned counsel for the appellant and also the learned standing counsel for the third respondent-insurer.

4. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal is just and proper or does it call for enhancement.

5. Going by the averments in the claim petition, while the appellant was riding a scooter bearing registration No.KL-07/V-7687 through Kaipattoor-Angamaly Road, on 28.3.2003 at about 8.15 a.m., a school bus bearing registration No.KL-07/AL-7176 owned by the first respondent and driven by the second respondent came in a rash and negligent manner through Kalady-Manjapra road and hit against the left side of the scooter, as a result of which the appellant was thrown out from the scooter and he sustained grievous injuries. Immediately after the accident, the appellant was taken to Little Flower Hospital, Angamaly, from where he was shifted to St.James Hospital, Chalakudy. The appellant contended that the accident occurred solely due to the rash and negligent driving of the bus by the second respondent and hence

respondents 1 to 3 are jointly and severally liable to pay the compensation.

6. The second respondent-driver remained ex parte. The first respondent-owner filed a written statement admitting the ownership of the bus involved in the accident. According to the first respondent, the vehicle was insured with the third respondent and the second respondent-driver was holding a valid driving licence and the accident occurred solely due to the rash and negligent driving of the appellant.

7. The third respondent-insurer filed a written statement contending that the accident occurred due to the negligence on the part of the appellant himself in riding the scooter. The third respondent-insurer admitted the insurance coverage of the bus as on the date of the accident. They disputed the age, occupation and income of the appellant and contended that the claim made under different heads is highly exorbitant.

8. On the side of the appellants, Exts.A1 to A12 were marked. Both sides have not chosen to adduce any oral evidence.

9. On an appreciation of the facts and circumstances of the case and also the evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the school bus by the second respondent. The Tribunal has also held that the appellant is entitled for a total compensation of ₹54,620/- under different heads and directed the third respondent-insurer to deposit the same

before the Tribunal together with interest at 7%per annum from the date of application till 30.6.2007 and thereafter at 7.5% per annum till realisation.

10. The appellant, aged 34 years at the time of accident is a practising lawyer earning a monthly income of ₹12,000/-. Ext.A10 is the copy of the membership certificate issued by the Kerala Advocates Welfare Fund, Ext.A11 is the copy of the Enrolment Certificate issued by the Bar Council of Kerala and Ext.A12 is a certificate issued by the President of Bar Association, Aluva stating that the appellant is having continuous and active practice in the courts at Aluva. The Tribunal fixed his monthly income as ₹3,000/- on the ground that the appellant failed to produce any documents to prove his earning. Considering the fact that the accident occurred in the year 2003 and the appellant is a practising lawyer as borne out from the documents on record, we re-fix his monthly income as ₹6,000/-.

11. Ext.A5 is the wound certificate, as per which, the appellant was admitted in Little Flower Hospital, Angamaly, on 28.3.2003, with lacerated wound frontal scalp 4x1 cm and fracture of lateral tibial condyle (left). Ext.A6 discharge summary issued from the Little Flower Hospital would show that the appellant had got multiple lacerations over left lower limb. The X-ray of the left knee showed fracture to the lateral tibial condyle. He was discharged on request on 29.3.2003, on which date he

was admitted in St.James Hospital, Chalakudy. It is evident from Ext.A7 discharge summary that he was discharged from that hospital on 10.4.2003. Ext.A8 is the medical certificate issued by Dr.Prakash of St.James Hospital, Chalakudy, which shows that the appellant was advised to take rest from 29.3.2003 till 29.7.2003.

12. Towards loss of earnings for a period of three months, the Tribunal granted a sum of ₹9,000/-, taking the monthly income of the appellant as ₹3,000/-. As we have already noticed, Ext.A8 medical certificate issued by Dr.Prakash of St.James Hospital, would show that the appellant was advised to take rest for a period of four months from 29.3.2003 till 29.7.2003. Therefore, taking the monthly income of the appellant as ₹6,000/-, he is granted a compensation of ₹24,000/- towards loss of earnings for a period of four months. Therefore, the appellant will be entitled for an additional compensation of ₹15,000/- under this head.

13. Towards pain and suffering the Tribunal awarded a sum of ₹15,000/-. Taking into consideration the injuries sustained by the appellant, as borne out from Ext.A5 wound certificate, and the treatment he had undergone, as evident from Ext.6 and A7 discharge summaries, we deem it appropriate to re-fix the compensation payable to the appellant under the head pain and suffering as ₹25,000/-. Therefore, the appellant will be entitled for an additional compensation of ₹10,000/- under this head.

14. Towards loss of amenities, the Tribunal awarded a sum of ₹10,000/-. Considering the nature of injuries sustained by the appellant, as borne out from the documents on record, we find it appropriate to re-fix the compensation payable under this head as ₹ 15,000/-. Therefore, the appellant will be entitled for an additional compensation of ₹5,000/- under this head.

15. In the absence of any reliable materials, we find that the compensation awarded to the appellant under the heads treatment expenses, transportation expenses, damage to clothing, attendants charges and extra nourishment represent just and reasonable compensation, which do not warrant any enhancement at the hands of this Court. Therefore, the appellant is not entitled for any enhancement of compensation under those heads.

16. Thus, in all, the appellant is entitled for an additional compensation of 30,000/- which would be in addition to what was awarded by the Tribunal.

17. The Tribunal awarded interest for the compensation amount at 7% per annum from the date of petition till 30.6.2007 and thereafter at 7.5% per annum till realisation. In **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9)**, taking note of the fact that the nationalised banks are granting interest at the rate of 9% per annum on fixed deposits for one year, the Apex Court directed that, the

compensation amount refixed shall bear interest at the rate of 9% per annum from the date of the claim. In **Supe Dei (Smt.) and others v. National Insurance Company Ltd. and another (2009 (4) SCC 513)**, after referring to the earlier decision in Kaushnuma Begum's case (supra), the Apex Court awarded 9% interest to the claimant in that case.

18. In view of the above decisions of the Apex Court, we find it just and proper to award to the appellant interest for the additional compensation of ₹30,000/- granted in this appeal at the rate of 9% per annum from the date of petition till the date of realisation.

19. Respondents 1 to 3 are jointly and severally held liable to pay the aforesaid amount to the appellant together with interest. The third respondent being the insurer of the vehicle involved in the accident is directed to deposit the aforesaid amount together with interest before the Motor Accidents Claims Tribunal, Perumbavoor, within a period of three months from the date of this judgment for disbursement to the appellant.

In the result, the appeal is allowed, modifying the award passed by the Tribunal in OP(MV)No.2295 of 2003 to the extent indicated above. The appellant shall also be entitled for cost of this proceedings.

Sd/-

P.N.RAVINDRAN, JUDGE

Sd/-

ANIL K.NARENDRAN, JUDGE

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