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 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No.2533 of 2012

AGAINST THE AWARD IN OP(MV)No.761/2002 of MACT,THODUPUZHA
DATED 15-07-2010

APPELLANTS : PETITIONER :-

JOSEPH PHILIP,
AGED 62, S/O.JOSEPH, POOKUMBIL HOUSE, MRALA,
THATTARATHATTA P.O, THODUPUZHA, IDUKKI DISTRICT.

BY ADVS.SMT.SHAMEENA SALAHUDHEEN
SRI.JACOB E. SIMON

RESPONDENTS : RESPONDENTS :-
----

*(1. RATNAKUMAR
S/O.VENUGOPAL, THUNDIYIL HOUSE, VENGALLOOR KARA,
VENGALLOOR P.O, THODUPUZHA, IDUKKI DISTTRICT,
PIN 685 584.)

* (1st respondent is deleted from the array of parties as per order in I.A.No.251 of 2015 dated 06.02.2015)

2. THE MANAGING DIRECTOR,
KERALA STATE TRANSPORT CORPORATION,
THIRUVANANTHAPURAM, PIN 695 004.

3. THE NATIONAL INSURANCE CO.LTD.,
REP.BY ITS BRANCH MANAGER, P.B No.434,
ST. JOSEPH'S PRESS BUILDING, VAZHUTHAKADU,
THIRUVANANTHAPURAM, PIN-695 004.

R3 BY ADV. SMT.SARAH SALVY
R2 BY ADV. SRI.P.C.CHACKO, SC, KSRTC.
BY SRI.BABU JOSEPH KURUVATHAZHA,SC,KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2533 of 2012

Dated this the 06th day of February, 2015

JUDGMENT

Anil K.Narendran, J.

The appellant is the claimant in O.P.(MV)No.761 of 2002 on the files of the Motor Accidents Claims Tribunal, Thodupuzha. The appellant filed the said original petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988 claiming a total sum of ₹5,00,000/- towards compensation for the injuries sustained by him in a motor accident which occurred on 23.2.2002, while he was riding a scooter bearing registration No.KL-06/5654. The Tribunal by award dated 15.7.2010 limited the total compensation to ₹1,79,400/- together with interest @ 6% per annum from the date of petition, i.e., from 6.9.2002 till realisation. The first respondent is the driver of the KSRTC bus involved in the accident, bearing No.KL-15/2190, owned by the second respondent, the Managing Director of the KSRTC. The third respondent was the insurer of the said bus. The Tribunal found that the accident occurred due to the negligence on the part of the first respondent. Since there was no violation of the conditions of the policy, the third respondent-insurer was held liable to pay the compensation amount to the appellant. Now the appellant is before us in this appeal, seeking enhancement of the compensation already awarded by the Tribunal.

2. Since the vehicle was validly covered by an insurance policy, the first respondent-driver was deleted from the party array, at the risk of the appellant, by order dated 6.2.2015 in I.A.No.251 of 2015.

3. We heard the arguments of the learned counsel for the appellant-claimant, the learned Standing Counsel for the second respondent-Corporation and also the learned Standing Counsel for the third respondent-insurer.

4. Going by the averments in the claim petition, on 23.2.2002, while the appellant was riding a scooter bearing registration No.KL-6/5654 from Muttom to Thodupuzha, with his wife as the pillion rider, a KSRTC bus bearing registration No. KL-15/2190 driven by the first respondent came from the opposite side and hit his scooter, as a result of which the appellant and the pillion rider sustained serious injuries. At the time of accident, the appellant was aged 52 years and he was an agriculturist earning an

income of ₹4,000/- per month.

5. The first respondent-driver remained exparte. The second respondent-Corporation filed a written statement contending that the appellant did not sustain serious injuries and that the compensation claimed is excessive. They also contended that the accident occurred due to the negligence on the part of the appellant in riding the scooter. The third respondent-insurer filed a written statement contending that the accident occurred due to the negligence of the appellant in riding the scooter. They also denied the injuries alleged to have been sustained by the appellant and also the period of treatment he had undergone.

6. Relying on the materials on record, the tribunal came to the conclusion that the accident had occurred due to the negligence on the part of the first respondent-driver of the KSRTC bus. The tribunal also found that the vehicle in question was validly insured at the time of accident and that the third respondent-insurer is liable to pay the compensation amount to the appellant. Though the appellant claimed a total compensation of ₹5,00,000/- under different heads, the tribunal awarded only ₹.1,79,400/- together with interest @ 6% per annum from 6.9.2002 till realisation.

7. 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.

8. On 23.2.2002, the appellant sustained injuries in a motor accident. As evident from Ext.A7 discharge summary he was admitted to the hospital on 23.2.2002 and was discharged on 1.4.2002. The injuries sustained by the appellant as a result of the accident that occurred on 23.2.2002 are disclosed in the discharge summary, which includes right frontal haemorrhage contusion, right temporal contusion with subarachnoid haemorrhage and brain stem compression. The appellant was treated with craniotomy right frontal polectomy and right temporal ICH evacuation under general anesthesia.

9. The appellant claimed that he was an agriculturist earning ₹4,000/- per month. The tribunal fixed the notional income at ₹2,000/- per month for the reason that no reliable evidence was there to prove the nature of occupation of the appellant or the extent of income derived therefrom. Taking into consideration the fact that the accident had occurred in the year 2002, we find it just and proper to notionally re-fix the income of the appellant at

₹3,000/- per month.

10. Towards loss of earnings, the tribunal granted a sum of ₹8,000/- by fixing the income of the appellant at ₹2,000/- per month, for a period of 4 months. Since we have re-fixed the notional income of the appellant at ₹3,000/- per month in this appeal, he will be entitled to get an additional compensation of ₹4000/- under this head.

11. Though no amount was claimed in the claim petition towards bystander expenses, the tribunal awarded a sum of ₹3,000/- under this head. From Ext.A7 discharge summary we notice that the appellant had undergone inpatient treatment from 23.2.2002 to 1.4.2002 and flap replacing was done on 21.3.2002. In such circumstances, considering the nature of the injuries sustained by the appellant and the treatment he had undergone, as borne out from the documents on record, we find it just and proper to award an additional compensation of ₹3,000/- to the appellant towards bystander expenses.

12. Towards extra nourishment the appellant claimed a sum of ₹35,000/- and the tribunal awarded ₹2,000/- under this head. Considering the injuries sustained by the appellant and also the

treatment he had undergone we find it just and proper to award an additional compensation of ₹3,000/- under this head.

13. Towards pain and suffering the appellant claimed a sum of ₹1,50,000/- and the tribunal awarded a sum of ₹20,000/- under this head. As we have already noticed, the appellant sustained severe injuries in the accident and he had undergone inpatient treatment from 23.2.2002 till 1.4.2002. He had also undergone flap replacing, which was done on 21.3.2002. In such circumstances, considering the injuries sustained by the appellant and also the treatment he had undergone, we find it just and proper to grant an additional compensation of ₹5,000/- to him towards pain and suffering.

14. Though no claim was made under the head loss of amenities, the tribunal awarded a sum of ₹15,000/-. Considering the nature of injuries sustained by the appellant, as borne out from records, we find it just and proper to award him a further sum of ₹5,000/- under this head.

15. In the absence of any reliable material, we find that the amount awarded by the tribunal under the heads transportation expenses and treatment expenses are just and proper and do not

call for any enhancement. Similarly, in the absence of any reliable material, the tribunal rightly rejected the claim made by the petitioner under the heads damage to clothing, permanent disability and loss of earning power.

16. Thus, in all the appellant/claimant is entitled for an additional compensation of ₹20,000/-, which would be in addition to what has already been granted by the tribunal.

17. The Tribunal has in the impugned award granted the appellant-claimant interest at the rate of 6% per annum for the compensation amount, from the date of petition, i.e., 6.9.2002 till realisation. Relying on the decision of the Apex Court in **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9)**, which was referred to by the Apex Court in a later decision in **Supe Dei v. National Insurance Co.Ltd. (2009 (4) SCC 513)**, the learned counsel for the appellant contended that, the Tribunal ought to have granted interest at the rate of 9% per annum for the compensation awarded. The learned Standing Counsel for the third respondent-insurer would point out that, by the order in C.M.Application No.3007 of 2012, this Court had condoned the delay of 684 days in filing this appeal on condition that, in the event of this

appeal being allowed and the compensation granted to the appellant being enhanced, the appellant-claimant will not be entitled to claim interest for the period from the date of award till the date of filing of this appeal on the enhanced compensation.

18. In Kaushnuma Begum's case (supra), 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's case (supra), after referring to the earlier decision in Kaushnuma Begum's case (supra), the Apex Court awarded 9% interest to the claimant in that case. In view of the above decisions of the Apex Court, we find it just and proper to award the appellant-claimant interest for the additional compensation of ₹20,000/- granted in this appeal, at the rate of 9% per annum from the date of the petition, i.e., from 6.9.2002 till the date of the award, i.e.,15.7.2010 and thereafter, from the date of filing of this appeal, i.e., 16.10.2012 till realisation. The appellant will also be entitled for interest at 9% per annum on the sum of ₹1,79,400/- originally awarded by the tribunal from the date of the petition, i.e., from 6.9.2002 till the date on

which the insurer deposited the said amount before the tribunal. Respondents 2 and 3 are jointly and severally held liable to pay the said amount together with interest to the appellant-claimant. The third respondent being the insurer of the vehicle involved in the accident is directed deposit the amount payable pursuant to this judgment before the Motor Accidents Claims Tribunal, Thodupuzha, within a period of two months from today for disbursement to the appellant-claimant.

In the result, the appeal is allowed, modifying the award passed by the Motor Accidents Claims Tribunal, Thodupuzha in OP(MV)No.761 of 2002, to the extent indicated above.

No order as to costs.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRAN, JUDGE

skj