

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

MACA.No. 674 of 2015 (B)

AGAINST THE AWARD IN OPMV 1137/2003 OF PRL.M.A.C.T.,KOZHIKODE
DATED 17-09-2008

APPELLANT/PETITIONER :

K.V.CHANDRAN, AGED 78 YEARS,
S/O.KARAPPAN, RESIDING AT ICHANICHAMKANDY PARAMBA,
KATTILPEEDIKA P.O. CHEVAYOOR, IRINGADANPALLI,
KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENT/3RD RESPONDENT:

UNITED INDIA INSURANCE CO.LTD,
DIVISIONAL OFFICE, WHITE LINES BUILDING, KALLAI ROAD,
KOZHIKODE – 673 013. REPRESENTED BY ITS MANAGER.

BY ADV. SMT.P.K.SANTHAMMA
BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.674 of 2015

Dated this the 3rd day of December, 2015

JUDGMENT

Ramachandra Menon, J.

This is an appeal preferred by the claimant before the M.A.C.T., Kozhikode, being aggrieved by the inadequacy of the compensation awarded, granting a total sum of ₹16,850/- in respect of the injuries sustained in a road traffic accident occurred on 4.4.2003.

2. As a matter of fact, the award was passed way back on 17.9.2008. The appeal was filed with a petition to condone the delay of '2248 days' in filing the same. The reason stated in the affidavit of the party is that the lawyer, who was appearing before the Tribunal, had entrusted the matter with one Santhosh Kumar, who happened to be the clerk of the lawyer who is representing the party before this Court. But he did not entrust the matter and had misappropriated the amounts given to him in connection with filing of the appeal. The party himself concedes in the affidavit, that he contacted the lawyer only after

about 6 years and it was only then, that he was given to understand that no steps were taken and that there was similar other cases as well, finally leading to filing of a complaint by the lawyer against her own clerk, ultimately leading to cancellation of registration of her clerk. Even after the alleged entrustment of the case, absolutely no effort was taken by the claimant or the lawyer who represented him before the Tribunal with regard to the follow up steps as to the filing of the appeal and the first attempt in this regard itself was allegedly taken after several years. However, the delay happened to be condoned by this Court when the matter came up for consideration before another Bench on 17.7.2015; observing that, if at all any enhancement is ordered, the appellant would not be entitled to get interest for the period of delay.

3. The accident occurred was on 4.4.2003, when the appellant who is a sexagenarian having crossed the age of 66 years, while proceeding along the road on a bicycle, was knocked down by the motor cycle bearing No.KL-12/B-2269 owned, driven and insured by respondents 1 to 3 before the Tribunal. This led

to the injuries sought to be compensated by filing the claim petition before the Tribunal. It is seen from the award that no statutory ground or defence as envisaged under Section 149(2) of the Act was available and the matter was contested by the insurance company on general grounds; particularly on the negligence and quantum. After considering the relevant aspects, amounts were awarded under different heads also reckoning the disability of 2% certified by Ext.C1 and also adopting the notional income as ₹18,000/- per annum. A multiplier of 5 was taken reckoning the age of the claimant and was accordingly, a total compensation of ₹16,850/- was awarded, which was directed to be satisfied with interest @ 7% per annum from the date of the petition.

4. The evidence adduced before the Tribunal consists of oral testimony of PW.1 (the appellant herein) and Exts.A1 to A5; besides Ext.C1 proceedings of the Medical Board. The learned counsel for the appellant submits that the amounts awarded by the Tribunal are very meagre, which requires to be enhanced quite substantially. It is stated that no amount has been awarded

towards the loss of amenities, in spite of taking note of the injuries suffered by the claimant, as taken note of in paragraph 7. The injuries sustained by the appellant/claimant as discussed by the Tribunal and as revealed from the Ext.A2 wound certificate are as given below:-

"Injuries are lacerated wound on eye brow (R) penetrating corneal wound involving iris, odema and haematoma. C.T. of head revealed fracture of nasal bones, posterior wall, left maxillary antrum."

5. We have heard the learned counsel appearing for the Insurance Company as well.

6. The amounts awarded by the Tribunal under different heads as discussed in paragraph 9 are in the following terms:-

Medical Bills	-	₹ 550/-
Incidental Charge	-	₹ 1500/-
Pain & suffering	-	₹ 8500/-
Disability	-	₹ 1800/-
Loss of income	-	₹ 4000/-
Transportation	-	₹ 500/-

		₹16,850/-
		=====

7. We find that fixation of notional income of ₹18,000/- per annum in respect of person who was aged 66 years as on the date of accident is not liable to be deprecated and the same is reasonable. However, only a sum of ₹4,000/- has been awarded towards loss of income. Considering the nature of injuries discussed by the Tribunal, we find that at least for a period of four months the claimant would not have been in a position to discharge the duties for eking out his livelihood. If this being the position, the amount comes to ₹6,000/- (₹1,500 x 4) whereas a sum of **₹2,000/-** remains to be satisfied as the balance compensation under this head. The amount awarded by the Tribunal towards pain and suffering is only to an extent of ₹8,500/-. There is hospitalisation for five days. Considering the same we find it fit and proper to have it enhanced to ₹15,000/-, thus resulting in a balance sum of **₹6,500/-**. The compensation for disability has been correctly worked out by the Tribunal reckoning 2% disability certified by the Medical Board as per Ext.C1. But the fact remains that no amount has been awarded towards loss of amenities. Considering the advanced age and

such other circumstances, we award a sum of **₹15,000/-** under this head. No amount has been awarded towards the bystanders' expenses, damage to clothing, extra nourishment, etc. We find it appropriate to grant a consolidated sum of **₹2,000/-** under these heads as well. Thus the total balance compensation payable comes to **₹25,500/-**-(₹2,000+₹6,500+₹15,000+₹2,000), which is required to be satisfied with interest @ 9% per annum from the date of the petition, except the period of delay of 2248 days condoned as per order dated 17.7.2015 and in conformity with the direction therein, as contained in the last paragraph incorporated as a condition for condoning the delay.

Since the policy is admitted, we direct the insurance company to deposit the said amount within a period of one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of accordingly.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge