IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

MACA.No. 193 of 2011 ( )

AGAINST THE AWARD IN OPMV 352/2008 of MACT VADAKARA

APPELLANT/3rd RESPONDENT

NATIONAL INSURANCE COMPANY LIMITED
THALASSERY NOW REPRESENTED BY ITS MANAGER
KOCHI REGIONAL OFFICE, OMANA BUILDING M.G.ROAD
KOCHI-35

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENT/PETITIONER

NARAYANAN,S/O.LATE RAMAR, MADAM
KANDIYIL HOUSE, PRARTHANA, NUT STREET P.O.
PARAVANTHALA ROAD, VATAKARA TALUK 673 104.

BY ADV. SRI.K.RAKESH ROSHAN
ADV. SMT.THUSHARA.V

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.
- -
M.A.C.A.No.193 OF 2011
- -
Dated this the 20th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal filed by the Insurance Company is confined to the fixation of quantum of compensation. It is a case where the injured was aged 68 at the time of the accident. It was claimed that the claimant was conducting grocery business. The accident occurred while he was walking through the road and he was hit by a motor cycle bearing Reg.No.KL-18-B 7290. The respondent/claimant sustained fracture of both bones of right leg, lacerated wound right forearm with external M cut and other injuries. He was admitted in the Medical College Hospital on 16.12.2007 and was discharged on 12.01.2008. Ext.A4 is the reference card showing the same. He was treated with ORIF with ILN. He was discharged with an advice not to walk and there were reviews on 28.2.2008, 24.4.2008, 12.6.2008 and on 19.6.2008. Ext.A5 shows that he had attended review on 03.07.1008, 1.11.2008 and 8.5.2009.

2. The learned Senior Counsel for the appellant submitted that the monthly income arrived at ₹10,000/- is erroneous, in spite of the claim of only ₹20,000/- towards partial loss of earnings, the Tribunal has awarded ₹60,000/- and even though there is no reduction in earning capacity, ₹54,000/- has been granted towards loss of earning capacity as well as permanent disability.

3. The learned counsel for the respondent submits that the award of the Tribunal is just and fair.

4. As far as the fixation of monthly income is concerned, the Tribunal has relied upon Exts.A11 and A12. The claimant was examined as PW1 also. Ext.A12 series are of the year 2006-2007. It further showed that he had paid licence fee for PFA licence and profession tax. On an assessment of the above evidence, the Tribunal found that ₹10,000/- can be taken as the monthly income. We find no reason to reject the same.

5. A total compensation of ₹1,99,190/- has been granted by the Tribunal out of which ₹60,000/- is towards loss of earnings.

Herein, the claim was only for the period only from 16.12.2007 to 16.2.2008. As rightly pointed out by the learned Senior Counsel for the Insurance Company, the same is the actual loss of earnings claimed by the appellant. Therefore the grant of the amount of ₹60,000/-treating the period of rest as six months cannot be justified. Hence the said amount is reduced to ₹20,000/- from ₹60,000/-. As far as loss towards reduction in earning capacity is concerned, it is granted along with permanent disability at ₹54,000/-. 9% is the disability assessed by the Medical Board. As the same is granted on both heads together, we find no reason to interfere. Accordingly, the total compensation will come to ₹1,59,190/- (Rupees one lakh fifty nine thousand one hundred ninety only) along with interest @ 7.5% as already granted by the Tribunal .

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

sv. **P.V.ASHA, JUDGE**