

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT.

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

MACA.No. 260 of 2011 ()

OPMV 977/2006 of M.A.C.T.,ERNAKULAM

APPELLANT/CLAIMANT::

MARGARET SEBASTIAN, AGED 46,
W/O.SEBASTIAN, KANNAMPUZHA HOUSE, KAVARAPARAMBU ROAD
IRUMPANAM DESOM, THIRUVANKULAM VILLAGE
KANAYANNUR TALUK, ERNAKULAM DISTRICT.

BY ADVS.SRI.C.K.GOVINDAN
SRI.L.P.ARAVINDAKSHAN

RESPONDENT/RESPONDENTS :

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1. DR.PRAKASH ABRAHAM, AGED 56,
S/O.C.J.ABRAHAM, 3-B, J.M.CRESENT FLATS
P.J.ANTONY ROAD, MAMANGALAM, EDAPPALLY. 682 025.
 2. THE NATIONAL INSURANCE COMPANY LIMITED
MANPATT CENTRE, HMT JUNCTION, KALAMASSERY
ERNAKULAM, PIN-683 104.
 3. UNITED INDIA INSURANCE COMPANY LTD.,
SARANYA, HOSPITAL ROAD, KOCHI-11.

R1 BY ADV. SRI.S.RADHAKRISHNAN
R2 BY ADV. SRI.E.M.JOSEPH
R3 BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A.No.260 of 2011

Dated 24th July, 2015.

J U D G M E N T

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The claimant is an employee in a private company. The accident took place on 7.12.2005. The claimant was aged 42 years at the time of accident. A sum of Rs.60,000/- was claimed in the proceedings by way of compensation. The Tribunal, on an appraisal of the materials on record, came to the conclusion that the claimant is entitled to a sum of Rs.22,250/- towards compensation. Though it was found by the Tribunal that the claimant is entitled to Rs.22,250/- towards compensation, it had passed an award in favour of the claimant only for a sum of Rs.11,125/- on the ground that the cause of accident is attributable to the claimant also to the tune of 50%. The claimant is aggrieved by the said decision of the Tribunal and hence this appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the second respondent, the insurer of the vehicle involved in the accident.

4. It is seen that at the time of accident, the claimant was travelling in a two wheeler and the accident occurred on account of the collision of the said two wheeler with the car driven by the first respondent. The case set up by the claimant in the claim petition is that on the relevant day, when she reached the place of occurrence in her two wheeler, the motor car driven by the first respondent which came in the same direction had overtaken the two wheeler ridden by the claimant and the accident occurred while the first respondent had overtaken her scooter. According to the claimant, on account of the occurrence, she was thrown on to the road along with the two wheeler and sustained injuries. The claimant had given evidence in the proceedings before the Tribunal as PW1. In her evidence as PW1, the claimant had explained the occurrence as narrated above. Further, a case is seen registered by the police against the first respondent in

connection with the accident alleging that the accident occurred on account of the negligence of the first respondent. Ext.A5 is the final report filed by the police in the said crime. It is seen from Ext.A5 that the police, after due investigation, came to the conclusion that the accident occurred on account of the negligence of the first respondent.

5. The contention of the first respondent as also the second respondent before the Tribunal was that there was no accident at all and that the claimant had not sustained any injuries. In support of the contention, they have not adduced any oral evidence. Instead, they produced Ext.B2 report prepared by the Motor Vehicles Inspector concerning the damage caused to the vehicle. The accident took place on 7.12.2005. Ext.B2 report was prepared by the Motor Vehicles Inspector only on 20.3.2006. Ext.B2 was produced by the first respondent to show that no damage was noted on the vehicle of the first respondent by the Motor Vehicles Inspector. Having regard to the facts and circumstances of the case, the Tribunal found that the accident, as alleged by the claimant had

occurred involving the vehicle owned by the first respondent. Nevertheless, it is seen that the Tribunal found contributory negligence on the part of the claimant to the tune of 50%. The reason given by the Tribunal to hold contributory negligence against the claimant reads thus :

“From the nature of the accident it can be seen that no rash and negligent driving can be attributed upon the shoulders of the first respondent. As there was no damages, other than broken of the mirror of the two wheeler also shows that (even from the admission of the claimant) no such violent collision had taken place. That points to the fact that the claimant has also contributed her own share for the commission of the offence and it is estimated at 50%.”

I do not agree. Unusually, in this case, the claimant had given oral evidence. As noticed above, the claimant had given a clear picture of the occurrence in her evidence. True, she was cross examined. But, according to me, in the absence of any evidence to the contrary, the Tribunal was not right in holding contributory negligence against the claimant especially in the light of Ext.A5 final report filed by the police in the crime registered in connection with the accident. The finding rendered

by the Tribunal that the accident occurred on account of the negligence of the claimant as well, in the circumstances, is liable to be interfered with.

6. Coming to the quantum of compensation, it is seen that the claimant sustained fracture of glenoid cavity and right clavicle. She was under hospitalization for about five days. Ext.A8 leave certificate issued by the employer of the claimant indicates that the claimant was on leave from her work for a period of one month from 8.12.2005 to 8.1.2006. It is seen that only a sum of Rs.1,000/- has been awarded to the claimant towards extra nourishment. In the nature of the injuries sustained by the claimant and the treatment undergone by her, I am of the view that the claimant should have been granted at least a sum of Rs.3,000/- towards extra nourishment. The claimant is therefore, entitled to a further sum of Rs.2,000/- towards extra nourishment. Towards compensation for pain and sufferings, as against the claim of Rs.25,000/-, the Tribunal had granted only a sum of Rs.10,000/-. Since the accident took place in the year 2005, according to me, the claimant is entitled

to a further sum of Rs.7,500/- on that head. No compensation is seen granted to the claimant towards loss of earnings. As pointed out earlier, after the accident, the claimant was on leave for about one month. The learned counsel for the second respondent contended that since the claimant was on leave, she has not suffered any loss of earnings and therefore, the claimant is not entitled to any compensation on that head. This argument cannot be accepted. Merely for the reason that the claimant had availed her eligible leave, she cannot be denied compensation for loss of earnings, for, the leave could have been availed by her for other purposes. Ext.A7 salary slip indicates that the claimant was drawing Rs.6,300/- towards her basic salary and Dearness Allowance. In such circumstances, according to me, the claimant is entitled to the said amount towards loss of earnings. Thus, the claimant is entitled to a further sum of Rs.15,800/- towards compensation.

7. In the result, the appeal is allowed and the impugned award is set aside. The finding of the Tribunal that the claimant is entitled to only one half of the compensation

determined as due is vacated. In addition, the claimant is granted a further sum of Rs.15,800/- towards compensation.

It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 8% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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