

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

MACA.No. 870 of 2007 ()

AGAINST THE AWARD IN OPMV 1729/1995 of MACT PALA DATED 12-08-2005

APPELLANT(S)/PETITIONER;:

**ROBICHAN JOSEPH, PUTHAKUZHIL,
INCHIANY P.O., PARATHODE, KOTTAYAM.**

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENT(S)/RESPONDENTS;:

- 1. M.S.RANJITH, MANNALATH HOUSE,
T.B.ROAD, KOTTAYAM.**
- 2. RAJU, KARILPPAMATTOM HOUSE,
PAMPADY, KOTTAYAM DIST.**
- 3. THE ORIENTAL INSURANCE CO. LTD.,
THODUPUZHA BRANCH.**

R,R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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**P.N.RAVINDRAN
&
BABU MATHEW P.JOSEPH, JJ.**

M.A.C.A.No.870 of 2007

Dated this the 15th day of September, 2015

JUDGMENT

BABU MATHEW P. JOSEPH, J.

The appellant sustained serious injuries in a motor accident that occurred on 30.12.1993 involving a bus driven by the second respondent, owned by the first respondent and insured with the third respondent. He has preferred a petition before the Motor Accidents Claims Tribunal, Pala, claiming compensation on account of the injuries sustained by him in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the second respondent and awarded a total compensation of Rs.56,000/- (Rupees fiftysix thousand only) under various heads as follows:

Transportation to hospital	-	Rs.1,000/-
Extra nourishment	-	Rs.750/-
Damages to clothing	-	Rs.250/-
Medical and bystanders' expenses	-	Rs.7,000/-

Pain and Suffering	-	Rs.12,000/-
Loss of amenities	-	<u>Rs.35,000/-</u>
TOTAL		Rs.56,000/- =====

The third respondent was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent Insurance company. The first respondent remains absent despite serving notice on him. Notice to the second respondent is dispensed with.

3. The appellant sustained intercondylar fracture of his left elbow with the fracture of olecranon. He was taken to the Medical College Hospital, Kottayam, after the accident. He was treated there, as an inpatient, till 13.1.1994. He was treated by open reduction and internal fixation. Later, the implant was removed on 14.6.1994. He has produced Ext.A8 medical certificate in which his permanent disability is assessed as 16%. The appellant

was aged 26 at the time of accident. He was working as a teacher at the Panchayat L.P. School, Vettimattom, during that period.

4. It is quite probable that the nature of fractures suffered by the appellant will lead to some permanent disability. It is the case of the appellant that along with the work as a teacher, he was also doing agricultural operations in his own land. The learned Tribunal has accepted that case. On considering the fact that the permanent disability sustained by the appellant would affect his agricultural operations, the Tribunal has awarded Rs.35,000/- as compensation for loss of amenities. The appellant does not have a case that he could not continue his work as a teacher as a result of the injuries sustained in the accident nor he has a case that he suffered any loss of income as a result of the accident. But, the fact remains that the appellant was compelled to avail of leave for the purpose of his treatment. The true account of the leave so availed of is not in evidence.

Therefore, based on probability, we award an amount of Rs.3,000/- towards loss of leave. It is true that he can continue his occupation as a teacher till his superannuation with this disability. But, after retirement such an experienced person can engage himself in some other gainful avocation. In that case, his permanent disability sustained may stand in his way even though it may not fully prohibit him from performing some job earning income. Considering that aspect, we award Rs.25,000/- on account of permanent disability. We find no reason to interfere with the amounts awarded by the learned Tribunal under various heads. Thus the appellant is entitled to an additional amount of Rs.28,000/- (Rupees twenty eight thousand only) as compensation over and above the amount awarded by the Tribunal. The said amount of Rs.28,000/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realization. The third respondent insurance company shall deposit the amount within 30 days from the date of

receipt of a copy of this judgment.

This appeal is allowed in part as above.

**Sd/-
P.N.RAVINDRAN
JUDGE**

**Sd/-
BABU MATHEW P.JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

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