IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

MACA.No. 719 of 2013

AGAINST THE AWARD IN OPMV 966/2010 of M.A.C.T.,ERNAKULAM DATED 09-08-2012

APPELLANT/PETITIONER :

SARITHA, AGED 37 YEARS,
W/O. SAJAN, 'SREENILAYAM', (KOTHATTU HOUSE),
SOUTH PARAVOOR P.O., THRIPOONITHURA,
ERNAKULAM-682 320.

BY ADVS.SRI.K.JANARDHANAN
SRI.K.J.MANU RAJ

RESPONDENT/3RD RESPONDENT :

UNITED INDIA INSURANCE CO. LTD.,
CHITTOOR ROAD, ERNAKULAM, COCHIN-31.

BY ADV. SRI.JOHN JOSEPH VETTIKKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.

M.A.C.A. No.719 of 2013

Dated this the 7th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The appellant was the petitioner before the Additional Motor Accidents Claims Tribunal, Ernakulam, who sought compensation for the injuries sustained by her in a road traffic accident occurred on 28/3/2010.

2. The appellant was travelling as a pillion rider on a motorcycle bearing Registration No.KL-39A 1687 ridden by her husband on 28/3/2010. While so, she was knocked down by a car bearing Registration No.KL-7H 4248, which came to the opposite side causing serious injuries which led to the claim petition.

3. The 1st and 2nd respondents, who are the owner

and driver of the car respectively, did not choose to contest the matter and they were set ex parte. The matter was contested by the Insurance Company alone. No evidence, oral or documentary, was adduced by either side. The evidence only consists of the documents produced by the appellant marked as Exts.A1 to A10 and Ext.C1 (which is the disability certificate issued by the competent Medical Board). After evaluating the evidence, the Tribunal arrived at a finding that the accident occurred only due to the negligent driving of the car by the 2nd respondent and the liability was fixed accordingly. After considering the extent and nature of injuries sustained by the appellant, the Tribunal awarded amounts under various heads granting a total compensation of ₹95,862/- which was directed to be satisfied with interest at the rate of 9% per annum which is sought to be enhanced by filing the present appeal.

4. Heard the learned counsel for the appellant as

well as the learned counsel appearing for the Insurance Company.

5. The injuries sustained by the appellant as evident from Ext.A4 wound certificate, as discussed by the Tribunal in paragraphs-8 and 9 of the impugned award are under the following terms:

> "8. Issue No.2:- According to petitioner he has sustained following injuries:-
>
> 1. Punctured wound over right leg and left leg.
>
> 2. Lacerated wound over left leg, forehead;
>
> 3. Fracture both bone left leg.
>
> 9. Ext.A4 is the copy of wound certificate issued from Specialist Hospital which would show that petitioner was taken to that hospital immediately after the accident with above said injuries and treated as outpatient. A6 is the discharge certificate issued

> from Medical College Hospital showing that petitioner was admitted on 28/3/10 and discharged on 7/4/10. There was a fracture type II open of both bone of left leg. A8 is discharge card issued from Medical College showing the details of treatment in continuation with the Specialist Hospital. Therefore, injuries sustained by the petitioner and treatment given to him are proved by above said documents."

6. The amounts awarded by the Tribunal under various heads are as given below:

Head	*Amount claimed*	*Amount awarded*	*Details*
Loss of earning	30000	9000	3000x3 months
Transportation expenses	5000	1000	
Damage to clothing	2000	500	
Extra nourishment	3000	1000	
Expense for treatment	20000	6282	(entire bill amount claimed)
Bystanders expenses`	40000	2000	(200 x 10 days)
Shock, pain and suffering	10000	10000	

Head	***Amount claimed***	***Amount awarded***	***Details***
Compensation for permanent disability	400000	46080	3000 x 12 x16 x 8%
Total		95862	

7. It is stated that the appellant was working as a sales girl in an establishment and her proclaimed income as shown as ₹6,000/-. But the fact remains that no evidence, oral or documentary, was adduced before the Tribunal to establish the same. However, considering the facts and circumstances, more particularly in the light of the ruling rendered by the Apex Court in Sayed Sadiq and others v. Divisional Manager, United Indian Insurance Co. Ltd., [2014 (2) SCC 735] and also considering the fact that the accident was occurred in the year 2010, we find that the monthly income has to be increased by $1/3^{rd}$ so as to make it ₹4,000/- in the place of ₹3,000/- to work out the compensation under different heads. To re-work out the compensation as above, it is seen that the Tribunal worked out only three months' salary for the

loss of earning and considering the extent of injuries sustained by her and also shortening of the legs, it goes without saying that the appellant had to undergo much an ordeal, and as she is not in a position to physiotherapy, at least six months' salary has to be reckoned. The loss of earning has to be worked out as: 4,000x6=24,000/-. After deducting the amount of ₹9,000/- already granted by the Tribunal, it comes to ₹15,000/-. We find it also appropriate to grant a further sum of ₹5,000/- towards pain and suffering and over and above ₹20,000/- already awarded under the same head. In respect of loss of amenities, the Tribunal granted only an amount of ₹10,000/- which necessarily has to be increased to ₹25,000/- and the balance amount of ₹15,000/- to be compensated. For permanent disability comes to ₹4,000 x 12 x 16 x 8/100=₹61,440/-. The amount awarded by the Tribunal under this head is ₹46,080/-. The balance amount comes to ₹15,360/-. The total compensation payable under these heads comes to ₹61,440/-. The said amount shall be satisfied with interest at the rate of 9% per annum from the date of filing the claim petition i.e., 28/6/2010 till the date of deposit. Since the policy is admitted, this Court finds that the amount shall be deposited by the Insurance Company before the Tribunal within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge