

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

MACA.No. 382 of 2011 ()

AGAINST THE AWARD IN OP(MV) NO. 35/2004 of MACT, KALPETTA DATED
12-07-2010

APPELLANT(S)/PETITIONER:

KUNJUMHAMMED, S/O.ABDHULLA HAJI,
AGED 60 YEARS, THAIKKANDY HOUSE, PANAMARAM P.O.
MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT(S)/RESPONDENTS:

1. BINEESH, S/O.NARAYANAN, AGE 34 YEARS,
MUKKEL HOUSE, KARIAMBADIKUNNU, KALANADIKOLLY P.O.
PULPALLY, SULTHAN BATHERY TALUK
(DRIVER OF BUS KL-12/B 3121), 673579.

2. P.B.ACHUHAN, S/O.VELUCHETTY, AGE 59 YEARS,
PALAMoola HOUSE, PULPALLY
SULTHAN BATHERY TALUK
(OWNER OF BUS KL-12/B 3121)-673579.

3. NATIONAL INSURANCE CO. LTD., KALPETTA
BRANCH, P.O.KALPETTA, WAYANADU
(POLICY NO.501600/31/03/6305093)-673121.

R3 BY ADV. SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.382 of 2011

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Dated this the 2nd day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(MV). No. 35 of 2004 on the file of the Motor Accidents Claims Tribunal, Kalpetta. By award passed on 31.03.2010, the Motor Accidents Claims Tribunal awarded the sum of ₹1,20,981/- as compensation to the appellant and directed the third respondent insurer to deposit the said amount together with interest at 7.5% per annum from the date of petition till the date of payment and proportionate costs quantified at ₹5,500/-. The claimant has, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

2. It is not in dispute that the appellant had in the motor accident that took place in 02.01.2004 sustained the following injuries: comminuted fracture of tibia, trochanteric fracture and lacerated wound on the dorsum of the wrist. He had also undergone treatment as an in-patient at Medical College Hospital, Calicut during the period from 2.01.2004 to 28.01.2004. The medical board assessed his disability as 15%. The appellant was aged 53 years on the date of the accident. The Motor Accidents Claims Tribunal has by the impugned

award awarded the following amounts as compensation to the appellant/claimant under various heads:

Loss of earnings	₹5,000/- (₹2,500/-X2)
Medical expenses	₹42,200/-
Expenses of bystander	₹6,750/-
Transportation expenses	₹1,500/-
Extra nourishment	₹5,00/-
Damage to clothing etc	₹5,00/-
Pain and suffering	₹15,000/-
Compensation for permanent disability	₹49,500/-

Total	₹1,20,950/-

3. The Motor Accidents Claims Tribunal has awarded compensation for loss of earnings and permanent disability, taking the monthly income of the claimant as ₹2,500/-. The main ground in this appeal is as regards the multiplicand adopted by the Tribunal for awarding compensation under the head permanent disability and towards loss of earnings for a period of two months. The Tribunal held that though the claimant had contended that he was a merchant earning an income of ₹6,000/- per mensem, no document is produced to substantiate the said contention.

4. We heard Sri. Anil Eby Jose, learned counsel appearing for

the appellant and Smt. Raji T. Bhaskar, learned counsel appearing for the third respondent. We have also gone through the pleadings and the materials on record. As stated earlier, the appellant had claimed that he was a merchant earning an income of ₹6,000/- per mensem. The Tribunal has on the short ground that no document is produced to prove the income of the claimant, calculated the compensation payable under the head permanent disability taking ₹2,500/- as his monthly income. The Apex Court has in **Lata Wadhwa and Others V. State of Bihar and others** (2001 ACJ 1735) awarded compensation, taking the value of the services rendered by a house wife in the age group of 22 to 59 as ₹3,000/- per month. The accident in that case took place on 3.3.1989. In **Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited** (AIR 2011 SC 2951), the Apex Court has taken the monthly income of a person working as a coolie as ₹4,500/-. The accident in that case took place in the year 2004. The claimant in the instant case is a merchant. The accident in the instant case took place in the year 2004. We are therefore of the opinion that this court will be perfectly justified in proceeding on the basis that the appellant who was a merchant (the said fact is not disputed) was earning a monthly income of ₹4,500/-. Calculated on that basis, the compensation payable to him for loss of earnings for a period of two months will be ₹9,000/- and the

compensation payable to him for permanent disability will be ₹4,500 X 12 X 11 X 15/100 = ₹89,100/-.

5. The Motor Accidents Claims Tribunal by the impugned award awarded the sum of ₹5,000/- towards loss of earnings for a period of two months. Consequently he will be entitled to receive a further sum of ₹4,000/- under that head. By the impugned award, the Motor Accidents Claims Tribunal has awarded only the sum of ₹49,500/- as compensation under the head permanent disability. Consequently he will be entitled to get a further sum of ₹39,600/- as compensation under the head compensation for permanent disability. We also notice that the Motor Accidents Claims Tribunal has awarded only the sum of ₹15,000/- towards pain and suffering. Ext.A59 treatment book shows that the petitioner suffered a comminuted fracture of the tibia and trochanteric fracture. He was also in the hospital for a period of 27 days from 2.01.2004 to 28.01.2004. A comminuted fracture is a fracture in which there are several breaks in the bone creating numerous fractures. Trochanteric fracture is a fracture where the protuberance on the proximal end of the femur that serves for attachment of various muscles is fractured. Having regard to the nature of the injury, the appellant would have suffered agonising pain and would have been in considerable distress. In such circumstances, we are of the opinion that he is entitled to be awarded a further sum of

₹10,000/- as compensation under the head pain and suffering. The compensation awarded under the other heads is fair and adequate and does not warrant any enhancement.

We accordingly hold that the appellant claimant is entitled to receive a further sum of ₹53,600/- (Rupees fifty three thousand six hundred) as compensation over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the said sum of ₹53,600/- (Rupees fifty three thousand six hundred) together with interest at 9% per annum from the date of date of petition till date of deposit. Upon such deposit being made, the amount deposited shall be released to the appellant. No costs.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/-