IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

MACA.No. 973 of 2015 ()

AGAINST THE AWARD IN OPMV 1133/2012 of M.A.C.T.,ERNAKULAM
DATED 04-09-2014
...

APPELLANT/PETITIONER:

JOSE VARGHESE, AGED 58 YEARS,
S/O.VARGHESE, PAPPALI HOUSE, ERUMATHALA KARA,
ASHOKPURAM BHAGAM, ALUVA.P.O, ERNAKULAM.

BY ADVS.SRI.P.M.JOSHI
SMT.SIJI K.PAUL

RESPONDENTS/RESPONDENT NO.2:

THE MANAGER,
FUTURE GENERALLY INDIA INSURANCE COMPANY LTD.,
M.G.ROAD, ERNAKULAM, PIN-682011.

BY ADV. SRI.K.B.RAMANAND

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OKB

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

M.A.C.A.No.973 of 2015

Dated this the 25th day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in connection with the injuries sustained by the appellant in a road traffic accident occurred on 16.3.2012 forms the subject matter of the appeal preferred by the claimant.

2. On 16.3.2012, when the appellant was riding a motorcycle bearing No.KL-7/Z-783 along Vadakkekotta-Tripunithura road and when he reached near N.S.S. College, a car bearing No.KL-7/39-3455 owned and driven by the 1st respondent, came in a rash and negligent manner and knocked him down causing serious injuries which are sought to be compensated by filing the claim petition. The 1st respondent before the Tribunal chose to remain ex parte. The matter was contested only by the 2nd respondent Insurance Company, who is the sole respondent in this appeal. The policy stands admitted and the defence was mainly

on general grounds, particularly, with regard to the negligence and quantum. The evidence adduced before the Tribunal consists only of Exts.A1 to A9. No oral evidence was adduced by either side and no documents were produced from the part of the respondent as well. After hearing both the sides, the Tribunal arrived at a finding that the accident occurred was only because of the car driven by the 1st respondent before the Tribunal and the liability was fixed accordingly. Considering the available materials on record, the Tribunal awarded a total compensation of Rs.2,48,100/-, which includes medical expenses to the tune of Rs.1.67 lakhs. The said amount was directed to be satisfied with interest @ 8% per annum from the date of the petition till realisation, which is sought to be enhanced in this appeal.

3. The injuries sustained by the appellant are revealed from Ext.A3 wound certificate and the consequences resulted have been discussed by the Tribunal in paragraph 8. The claimant is stated as having a monthly income of Rs.3,600/- by virtue of the

'C' class business, which was stated as being conducted by him. The Tribunal found that the nature and extent of injuries would have resulted temporary loss of income at least for a period of six months and amounts were awarded under various heads, as given below:

Heads	*Amount claimed (in Rs.)*	*Amount awarded (in Rs.)*
Loss of earnings	36000	21600
Partial loss of earnings	0	0
Transport expenses	4000	2000
Extra nourishment	3000	1000
Damage to clothes and articles	2000	500
Attendance expense	6000	6000
Medical expenses	300000	167000
Compensation for pain and sufferings	60000	30000
Compensation for loss of amenities and enjoyment in life	40000	20000
Compensation for future treatment	45000	0
Compensation for loss of earning power	35000	0
Compensation for continuing or permanent disability if any	45000	0
Total	576000	**248100**
Claim limited to Rs.5,00,000/-		

4. After hearing both the sides, this Court finds that the claim of the appellant that he was having a monthly income of Rs.3,600/- has been accepted by the

Tribunal and loss of earning for six months has been awarded accordingly. The Tribunal has also awarded amounts under the different heads, which are quite reasonable. No appeal has been preferred from the part of the Insurance Company as to the reckoning of the monthly income as above and even otherwise. Going by the fact that the accident had occurred in the year 2012, we do not find it as unreasonable in any manner.

5. However, despite the serious injuries sustained by the claimant, no compensation is seen awarded in respect of the 'permanent disability', presumably for the reason that no disability certificate was produced. When the matter came up for consideration before this Court earlier, an interim order was passed on 21.7.2015 in I.A.No.2410/2015, whereby the appellant was caused to be examined by a Medical Board to be constituted by the Superintendent of the General Hospital, Ernakulam. Now, a report has been submitted by the Medical Board, pursuant to the said order and going by the contents of the said report dated 8.9.2015, the permanent

disability has been assessed and certified as 5%. After hearing both the sides, this Court finds that the appellant requires to be compensated in respect of the permanent physical disability to this extent.

Accordingly, reckoning the monthly income of Rs.3,600/- as adopted by the Tribunal and adopting the multiplier of '9' based on the age of the appellant as 58 years, we award a sum of Rs.19,440/- in respect of the certified disability of 5% (3600x12x9x5/100). The said amount shall be satisfied with interest @ 9% per annum from the date of petition till the date of satisfaction. Since the policy is admitted, we direct the respondent Insurance Company to satisfy the said amount within one month from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/-
P.R. RAMACHANDRA MENON, JUDGE

Sd/-
K. HARILAL, JUDGE

okb.