

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

MACA.No. 1007 of 2015 ()

**AGAINST THE AWARD IN OPMV 1765/2013 of PRINCIPAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL, KOZHIKODE DATED 30-10-2014**

APPELLANT/CLAIMANT:

**BHANUMATHI.T, AGED 50 YEARS,
W/O.BALAKRISHNAN, THEKKETHODI HOUSE, MARAD BEACH,
NADUVATTOM AMSOM DESOM, P.O. ARAKKINAR, KOZHIKODE.**

**BY ADVS.SRI.V.T.RAGHUNATH
SMT.C.V.RAJALAKSHMI**

RESPONDENTS:

- 1. HAMEED, AGED 34 YEARS
S/O.MUHAMMAD, PANDARATHU VALAPPU, PAYYANAKKAL
PANNIYANKARA AMSOM, P.O.KALLAI, KOZHIKODE-673 003..**
- 2. SUHARA, AGED 40 YEARS
W/O.NOT KNOWN, THAYYIL HOUSE, P.O.VENGOLAM
VENGOLAM AMSOM AND DESOM, KOZHIKODE, KOYILANDI TALUK-673 305.**
- 3. HDFC ERGO INSURANCE COMPANY LTD.
KOZHIKODE-673 001.**

R3 BY ADV. SRI.K.B.RAMANAND

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
=====

M.A.C.A.No.1007 of 2015
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Dated this the 9th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(M.V.)No.1765 of 2013 on the file of the Motor Accidents Claims Tribunal, Kozhikode. The appellant instituted O.P.(M.V.)No.1765 of 2013 contending that while she was boarding a stage carriage bus driven by the first respondent, owned by the second respondent and insured by the third respondent, the driver suddenly took the bus forward and immediately applied the brake and thereby she fell inside the bus and sustained grievous injuries including fracture of the wrist of the left arm. It was stated in the claim petition that thereupon she underwent treatment as an inpatient at Government General Hospital, Kozhikode till 4.1.2012 and that as a result of the accident she was disabled from attending to her work as a housemaid for about two months. She contended that the accident took place on account of the rash and negligent driving of the bus by the first respondent and claimed a total sum of Rs.3,00,000/- as compensation under various heads.

2. Though summons was served, respondents 1 and 3 did not

enter appearance. With the result, they were set exparte. The second respondent, the owner of the stage carriage bus alone entered appearance and filed a written statement wherein he denied the statement in the claim petition that the accident took place on account of the rash and negligent driving of the bus by the first respondent. He also disputed the age, occupation and monthly income of the claimant and contended that the motor vehicle involved in the accident was covered by a valid policy of insurance issued by the third respondent. Along with the written statement he also produced a copy of the policy. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the bus by the first respondent. The Motor Accidents Claims Tribunal also awarded the sum of Rs.34,000/- as compensation under various heads and directed the third respondent insurer to deposit the said sum with interest at 8% per annum from the date of petition till the date of deposit with proportionate costs. The claimant has, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

3. We heard Sri.V.T.Raghunath, learned counsel appearing for the appellant and Sri.K.B.Ramanand, learned counsel appearing for the third respondent insurer. Sri.V.T.Raghunath, learned counsel

appearing for the appellant contended that the claimant examined as PW1 has in the affidavit filed by her in lieu of chief examination averred that she was working as a housemaid in the residences of Alappatt Subhash and Kelappandakath Sasi and that she was earning a monthly income of Rs.9,000/-, that she had also deposed that her arm was in a plaster cast for about five weeks and that as a result thereof she was disabled from working as a housemaid, but the respondents did not cross-examine the claimant. The learned counsel submitted that the finding entered by the Motor Accidents Claims Tribunal that the claimant has not produced any evidence to prove her monthly income and therefore, only a notional income of Rs.4,000/- per month should be taken for awarding compensation under the head loss of earnings cannot therefore be sustained. The learned counsel contended that as PW1 has not been cross-examined and the statement made by her to the effect that she was earning a monthly income of Rs.9,000/- has not been controverted, the Motor Accidents Claims Tribunal ought to have taken the income of the claimant as Rs.9,000/- per month and awarded compensation on that basis for loss of earnings for a period of two months. The learned counsel also contended that the compensation awarded towards expenses of a bystander for a period of four days, compensation awarded under the head pain and suffering and the compensation awarded under the

head loss of amenities is meagre and inadequate and is liable to be enhanced. Per contra, Sri.K.B.Ramanand, learned counsel appearing for the third respondent insurer contended that as the appellant did not suffer any disability and the only injury which she had sustained was fracture of the left wrist, by no stretch of imagination can it be said that the compensation awarded is not just and fair or that it is meagre and inadequate.

4. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The appellant/claimant had in column 4 of the claim petition stated that she was working as a housemaid. In column 28 she had stated that she was working as a housemaid in two houses for a remuneration of Rs.150/- from a house per day. In the affidavit filed by her in lieu of chief examination she had stated that she was earning a monthly income of Rs.9,000/- by working as a housemaid in the residences of Alappatt Subhash and Kelappandakath Sasi. When the claim petition was taken up for trial notwithstanding the fact that the claimant was present, the respondents did not cross-examine her. It is relevant in this context to note that the driver and the insurer of the motor vehicle had also not entered appearance and filed a written statement. Though the second respondent, the owner had entered appearance and filed a written

statement, his counsel did not choose to cross-examine the claimant. Such being the situation, we are of the opinion that the Motor Accidents Claims Tribunal erred in proceeding on the basis that there is no acceptable evidence to prove the monthly income of the claimant and in awarding compensation for loss of earnings taking the monthly income as Rs.4,000/-. On the evidence on record, we are of the opinion that the Tribunal ought to have awarded compensation under the head loss of earnings for a period of two months taking the monthly income of the appellant as Rs.9,000/-. Computed on that basis, the compensation payable to the appellant under the head loss of earnings for a period of two months will be $\text{Rs.9,000} \times 2 = \text{Rs.18,000/-}$. The Motor Accidents Claims Tribunal has awarded only the sum of Rs.8,000/- under that head. We accordingly award an additional compensation of Rs.10,000/- under the head loss of earnings for a period of two months.

5. It is not in dispute that the appellant had undergone treatment in Government General Hospital, Kozhikode during the period from 1.1.2012 to 4.1.2012. As she was hospitalized and had undergone treatment as an inpatient she would certainly have required the assistance of a bystander. The Motor Accidents Claims Tribunal has by the impugned award, awarded only the sum of Rs.250/- towards expenses for the bystander. The accident took place in the

year 2012. Having regard to the cost of living, the Tribunal ought to have in our opinion awarded a minimum amount of Rs.1,000/- to meet the bystander's expenses. We accordingly award an additional amount of Rs.750/- towards bystander's expenses. It has come out in evidence that the appellant had suffered fracture of the left wrist and her arm was in a plaster cast for about five weeks. She would have as a result of the injury sustained by her undergone pain and suffering. For about five weeks she would have also been put to considerable amount of distress. Notwithstanding this fact, the Motor Accidents Claims Tribunal awarded only the sum of Rs.3,000/- as compensation under the head loss of amenities. On an over all view of the matter, we are of the opinion that a minimum amount of Rs.15,000/- ought to have awarded to the appellant/claimant under the head loss of amenities. The compensation awarded under the head pain and suffering is in our opinion, having regard to the injury sustained by the appellant, liable to be enhanced to Rs.25,000/- in the place of Rs.20,000/- awarded by the Tribunal. We find from the impugned award that the Motor Accidents Claims Tribunal has awarded interest only at the rate of 8% per annum. It is now settled by the decisions of the Apex Court that the rate of interest to be awarded is 9% per annum. We are therefore of the considered opinion that on the compensation awarded by the Tribunal and also on the enhanced

compensation awarded by this court, the appellant/claimant will be entitled to interest at 9% per annum.

For the reasons stated above, we allow the appeal and award an additional amount of Rs.750 + Rs.10,000 + Rs.12,000 + Rs.5,000 = Rs.27,750/- as compensation to the appellant/claimant over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the said amount together with interest at 9% per annum from the date of petition till date of deposit within two months from today. We also likewise award interest on the compensation awarded by the Motor Accidents Claims Tribunal at the rate of 9% per annum from the date of petition. The amount payable towards interest thus awarded by this court shall also be deposited within the aforesaid period of two months. Upon such deposit being made, the entire amount deposited shall be released to the appellant. No costs.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
ANU SIVARAMAN
JUDGE

/true copy/

P.A. To Judge

vpv