

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

MACA.No. 1094 of 2015 (B)

AGAINST THE AWARD IN OP(MV) 124/2010 of PRL.M.A.C.T.,KOZHIKODE
DATED 22-03-2011

APPELLANT/PETITIONER :

JUNAIS P., S/O.NADHEERA.P. AGED 23 YEARS,
PANOLATH HOUSE, PARAMBATHKAVU, AMSOM DESOM,
P.O.MANIPURAM, KODUVALLY (VIA), KOZHIKODE-673 572.

BY ADV. SMT.K.V.RESHMI

RESPONDENT/3RD RESPONDENT :

THE NATIONAL INSURANCE COMPANY LTD.,
NOOR COMPLEX, MAVOOR ROAD, KOZHIKODE-673 004,
REPRESENTED BY ITS MANAGER.

BY ADV. SMT.SARAH SALVY
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.1094 of 2015

Dated this the 3rd day of December, 2015

JUDGMENT

Ramachandra Menon, J.

This is an appeal preferred by the claimant before the M.A.C.T., Kozhikode being aggrieved by the inadequacy of the compensation awarded, granting a total sum of ₹70,904/- in respect of the injuries sustained in a road traffic accident occurred on 14.6.2009.

2. As a matter of fact, the award was passed as early as on 22.3.2011, whereas the appeal was filed with a petition to condone the delay of '1352 days' in filing the same. The reason stated in the affidavit of the party is that the lawyer, who was appearing before the Tribunal, had entrusted the matter with one Santhosh Kumar, who happened to be the clerk of the lawyer who is representing the party before this Court. But the Clerk did not entrust the matter and had misappropriated the amounts given to him in connection with filing of the appeal. The party himself

says in the affidavit that he contacted the lawyer only after about 4 years and it was only then, that he was given to understand that no steps were taken and that there were similar other cases as well, finally leading to filing of a complaint by the lawyer against her own clerk, ultimately leading to cancellation of registration of her clerk. Even after the alleged entrustment of the case, absolutely no effort was taken by the claimant or the lawyer who represented him before the Tribunal with regard to the 'follow up steps' as to the filing of the appeal. The first attempt in this regard itself was taken after several years. However, the delay happened to be condoned by this Court when the matter came up for consideration before another Bench on 16.6.2015 observing that, if at all any enhancement is ordered, the appellant would not be entitled to get interest for the period of delay.

3. The claim petition was filed against the owner, driver and insurer of the vehicle who were arrayed as

respondents 1 to 3 before the Tribunal. Respondents 1 and 2 remained *exparte* and in such circumstances, the matter was contested only by the Insurance Company raising general grounds, with regard to the quantum and negligence. The evidence adduced before the Tribunal consists of Exts.A1 to A7 and the report of the Medical Board certifying the extent of disability as 10%, vide Ext.C1. No oral evidence was adduced by either side.

4. The claim of the appellant was that he was a student of 19 years and that he was doing some part time job after the studies, as a 'salesman' in a shop. But absolutely no evidence has been adduced with regard to the said claim as to the engagement in a shop. If at all he was engaged as a salesman the position could have been easily proved by causing the attendance register to be produced, the wages being paid, the records which are legally supposed to be maintained by the employer who comes within the purview of the Kerala Shops and Commercial

Establishments Act. Atleast the claimant could have mounted the box and deposed as to the employment. In the said circumstance, the Tribunal was right in not accepting the claim with regard to the alleged employment or income. It was accordingly, that the Tribunal chose to fix the monthly income as just ₹2,000/-. But the fact reveals that the claimant was a person of 19 years and he could have pursued some or other work as a general worker and if the injuries sustained have resulted in disability, that naturally would reflect upon his earning capacity which requires to be compensated adequately.

5. The amounts awarded by the Tribunal, as discussed in paragraph 9 of the Award are reproduced below:-

	<i>The compensation claimed under different heads</i>	<i>Amount claimed</i>	<i>Amount allowed</i>
1	Loss of earning	20,000/-	6,000 (2,000 x 3 months)
2	Transport to Hospital	3,000/-	1,000/-
3	Extra nourishment	3,000/-	750/-

4	Damage to clothings and other articles	1,000/-	500/-
5	Treatment expenses	60,000/-	7,754/- (as per the Ext.A7 series)
6	Bystander's expenses	10,000/-	1,500/- (100 x 15 days)
7	Pain and sufferings	30,000/-	15,000/-
8	Permanent disability	2,00,000	38,400/- (2,000 x 12 x 10 x 16/100)
	Total		70,904/-

6. The injuries sustained by the claimant as discussed in paragraph 7 are as given below:-

"Ext.A2 is a copy of his wound certificate. It is found that the doctor, who had examined him immediately after the accident, noted all the injuries sustained including the fracture on right parietal bone."

7. There is no dispute with regard to the extent of disability certified by the medical board, which in fact has been accepted by the Tribunal as well. Considering the totality of the facts and circumstances, we find it fit and proper to reckon the notional monthly income as '₹2,500/-'. Under such circumstances, the compensation for 'loss of earning' awarded by the Tribunal for a period of three

months requires to be varied, which comes to ₹7,500/-. After giving credit to sum of ₹6,000/- awarded by the Tribunal, the balance comes to **₹1,500/-**. It is brought to our notice by the learned counsel appearing for the appellant that, the Tribunal has adopted a multiplier of '16' which ought to have been '18' by virtue of the law declared by the Apex Court in **Sarla Verma's case** reported in **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. (2010 (2) KLT 802)**. The compensation for permanent disability also requires to be reworked which comes to $₹2,500 \times 12 \times 10 \times 18/100 = ₹54,000/-$. After setting of the amount awarded by the Tribunal, the balance comes to **₹15,600/-**. Another important aspect to be noted is that no amount has been awarded by the Tribunal towards the loss of amenities. Considering the nature of injuries sustained, the adverse consequence resulted (disability to an extent of 10%) and the long way to go; the claimant being a boy of 19 years, we find it appropriate to

grant a sum of **₹15,000/-** under this head. Thus, the total balance compensation payable comes to **₹32,100/-** which requires to be satisfied with interest @ 9% per annum from the date of the petition, except the period of delay of 1352 days condoned as per order dated 16.6.2015 and in conformity with the direction therein, as contained in the last paragraph incorporated as a condition for condoning the delay.

Since the policy is admitted we direct the insurance company to deposit the said amount within a period of one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of accordingly.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj

True copy

P.A to Judge