IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

MACA.No. 567 of 2011 ( )

AGAINST THE AWARD IN OP(MV) NO. 92/2007 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA DATED 22-07-2010

APPELLANT(S)/PETITIONER:

SHYLA JOY,AGED 41 YEARS,W/O.P.J.JOY,
PALLATH HOUSE, POST BOOTHANAM, ANAPPARA
PULPALLY, PULPALLY AMSOM DESOM, SULTHAN BATHERY
WAYANAD DISTRICT.

BY ADV. SMT.CELINE JOSEPH

RESPONDENT(S)/RESPONDENT NO:3:

THE BRANCH MANAGER,NATIONAL INSURANCE CO.LTD,
2ND FLOOR, NOOR COMPLEX
MAVOOR ROAD-673001
KOZHIKODE.(INSURER OF THE VEHICLE BEARING
NO.KL-10/J-2490 AUTORICKSHAW).

BY ADV. SRI.PMM.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

M.A.C.A. No.567 of 2011

Dated this the 22nd day of May, 2015

<u>JUDGMENT</u>

Aggrieved by insufficiency of the award amount, the petitioner before the Motor Accidents claims Tribunal, who filed an application under Section166 of the Motor Vehicles Act, 1988, has come up in this appeal. The petitioner was travelling in an autorickshaw on 01.12.2006. The autorickshaw had been driven by the first respondent and it was owned by the second respondent. The autorickshaw was insured with the third respondent. Due to rash and negligent driving of the autorickshaw it capsized causing the appellant to be thrown off to the road. She sustained very serious injuries including a head injury. She was taken to a private hospital and admitted for nine days. She was a tailor by profession, earning ₹6,000/- per month. To substantiate the contention that she was a tailor, documents were also produced.

2. Heard the learned counsel for the appellant/petitioner and the respondent insurance company.

3. Learned counsel for the appellant relying on a decision of the Supreme Court in **Sanjay Kumar v. Ashok Kumar and another ((2014) 5**

SCC 330) contended that the Tribunal erred in calculating the quantum of compensation. According to the learned counsel, the loss of future prospects due to head injury should have been considered. Learned counsel for the insurance company contended that in an injury claim, if value for permanent disability and loss of amenities are claimed and allowed, there is no scope for granting compensation for future loss. I agree. It is now well settled through the pronouncement of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT 802)**, which was reiterated by subsequent Benches of the Supreme Court, that additional compensation for future prospects can be considered in the case of claim petitions pertaining to death. It is true that the records produced at the time of trial coupled with oral evidence of the appellant would show that she was practising the avocation of tailoring and was earning a substantial income. Unimpeached testimony of PW1 (appellant) if accepted would show that she was earning ₹6,000/- per month from her profession. I am inclined to accept the version of the appellant that the Tribunal unjustifiably took the amount of monthly income as ₹3,000/-. Therefore, the monthly income of the appellant is fixed at ₹6,000/-. That apart, the multiplier appropriate to the age of the appellant is 15 as per the guidelines in **Sarla Verma**'s case. Hence, the compensation should be reworked as shown hereunder:

The appellant claimed compensation for loss of earning to a tune of ₹72,000/-, but the Tribunal allowed ₹6,000/- only. This has to be modified as ₹18,000/- considering the fact that appellant sustained extensive head injury and she must have been confined to bed for a period of three months. Therefore, the appellant is entitled to get an additional compensation of ₹12,000/- in that head. The Tribunal correctly awarded compensation for medical expenses and bystander's expenses. Transportation cost awarded by the Tribunal is also justifiable. What is remaining for consideration is the compensation for permanent disability. The Tribunal has awarded only ₹57,600/- (₹3,000x12x16x10/100) towards compensation for permanent disability. The figure arrived at will be ₹1,08,000/- (₹6,000x15x12x10/100), if we recalculate the amount. Therefore, the appellant is entitled to get an additional compensation of ₹50,400/- towards compensation for permanent disability. The appellant shall be provided with compensation for loss of amenities to a tune of ₹5,000/-. I find no reason to interfere with the award passed by the Tribunal in respect of other claims.

In the result, the appeal is allowed. Appellant/petitioner is found entitled to get an additional compensation of ₹67,400/- (Rupees sixtyseven thousand and four hundred only) with interest at the rate of 9% per annum from the date of petition till recovery. The insurance company shall make payment within a period of sixty days from today.

A. HARIPRASAD, JUDGE.

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