

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

MACA.No. 587 of 2011

AGAINST THE AWARD IN OPMV 652/2005 of M.A.C.T.,
PUNALUR, DATED 14-10-2010

APPELLANT/PETITIONER:-

RATHEESH, S/O.RAJENDRAN, RATHEESH
BHAVAN, VELIYOM COLONY, VELIYOM PO
KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS/RESPONDENTS:-

1. MOHAMMEDKUNJU, KOTTAKUZHIYI,
KATTACHIRA, PALLICKAL PO, MAVELIKKARA
ALAPPUZHA DISTRICT. (DELETED) (*)

2. SHIBU, S/O.SIVASANKARA PILLAI,
SHEEJA BHAVAN, MARUTHAMONPALLY, POOYAPPALLY
KOLLAM DISTRICT.

3. THE BRANCH MANAGER, NATIONAL INSURANCE
CO.LTD., HOSPITAL ROAD, PARAMESWARAN PILLAI BHAVAN
KOLLAM.

[(*)DELETED AS PER ORDER IN IA.NO.727 OF 2015
DATED 26.2.2015.]

R3 BY ADV. SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

M.A.C.A.No.587 of 2011.

Dated this the 9th day of March, 2015.

J U D G M E N T

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted by the Tribunal.

2. The claimant is a bus cleaner. The accident took place on 19.04.2005. The claimant was aged 23 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.40,850/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. Ext.A12 is the wound certificate and Ext.A13 is the

discharge card. From Ext.A12, the Tribunal noticed that the claimant sustained fracture of clavicle and an open bone injury in the right knee. The Tribunal also noticed that the claimant had undergone inpatient treatment for 13 days. As noticed above, the claimant is a bus cleaner. The Tribunal granted only a sum of Rs.6,000/- towards loss of earnings for a period of three months, reckoning his monthly income at Rs.2,000/-. Since the accident took place in the year 2005, according to me, the monthly income of the claimant should have been reckoned at Rs.4,500/-. The claimant is therefore entitled to a further sum of Rs.7,500/- towards loss of earnings. Towards compensation for continuing disability, the Tribunal has granted a sum of Rs.21,600/- reckoning the monthly income of the claimant at Rs.2,000/- and the percentage of disability at 5%, applying the multiplier '18'. As I found that the income of the claimant is liable to be reckoned at Rs.4,500/-, the claimant is entitled to a further sum of Rs.27,000/- towards compensation for continuing disability. Towards pain and sufferings, despite the fact that the claimant has sustained fracture of clavicle and an open bone injury, only a sum of Rs.7,500/- is seen awarded. In the above circumstances, the claimant has to be awarded a sum of Rs.5,000/- more towards pain and suffering. No compensation is seen awarded for loss of

amenities and enjoyments in life. The claimant is entitled to some compensation on that head as well. On an evaluation of the materials on record, I am of the view that the claimant is entitled to a sum of Rs.7,500/- towards loss of amenities and enjoyment in life also. Thus, the claimant is entitled to a further sum of Rs.47,000/- towards compensation.

5. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7.5% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.47,000/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz., 115 days as ordered in C.M.Application No.990 of 2011.

Sd/-P.B.SURESH KUMAR, JUDGE.

Kvs/-

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