

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

MACA.No. 1184 of 2015 (E)

THE AWARD IN OP(MV) 1371/2008 OF MACT, RINJALAKUDA DATED 07.08.2014

APPELLANT/PETITIONER:

**KOUSALYA,
W/O. GOPALAN, KARANAT HOUSE, PARAPPUKARA P.O,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN-680721**

BY ADV. SRI. V. BINOY RAM

RESPONDENT(S):

- 1. DEVASSYKUTTY K.P, S/O. PAILAN, KATTALAN HOUSE,
PUDUSSERY, CHATTIKULAM, THRISSUR DISTRICT, PIN – 680 721.**
- 2. AJEESH, S/O. AMBUJAKSHAN, KUNNAMMAKARA HOUSE,
PALIAM, PO PARAPPUKARA, THRISSUR DISTRICT, PIN – 680 310.**
- 3. THE MANAGER,
UNITED INDIA INSURANCE COMPANY LTD, CHALAKUDY
THRISSUR DISTRICT, PIN - 680 307**
- 4. JAISON, S/O. DEVASSYKUTTY
KATTALAN HOUSE, PUDUSSERY, CHATTIKULAM
THRISSUR DISTRICT, PIN-680 721**

**R3 BY ADV. ADV.JOHN JOSEPH VETTIKKAD (NO MEMO)
R4 BY ADV. SRI.SHEEJO CHACKO**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

M.A.C.A. No. 1184 of 2015

Dated this the 20th day of August, 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 coolie. The accident took place on 07.10.2006. The claimant was aged 56 years at the time of accident. A sum of Rs.50,000/- 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.42,780/- and accordingly, an award was passed for the said amount. The claimant is aggrieved by the said award.

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

4. The Tribunal found from Ext.A14 wound certificate of the claimant that she sustained fracture of clavicle and fracture of 6th rib (L) in the accident. The claimant had produced Ext.A6 disability certificate issued by PW2 assessing the permanent disability of the claimant at 8%. The Tribunal did not accept the disability of the claimant at 8%, for, the disability certificate was not issued by the competent authority. The Tribunal, however, reckoned the disability of the claimant at 3% and granted compensation to the claimant for continuing permanent disability, reckoning her monthly income at Rs.2,500/- and applying the multiplier '8'. A perusal of the impugned award indicates that a fair and just compensation has been awarded to the claimant on all heads except for loss of earnings as also for continuing permanent disability. The Apex Court held in ***Sanjay Kumar v. Ashok Kumar & another [2014 ACJ 653]*** that in the absence of any evidence as to the income, the monthly income of the claimants, in proceedings for compensation before the Tribunal, shall be

reckoned at Rs.4,500/-. The decision of Apex Court referred above is a decision rendered in the context of an accident took place in the year 2004. In the light of the said decision of the Apex Court, I deem it appropriate to reckon the monthly income of the claimant at Rs.5,000/-. The Tribunal granted compensation for loss of earnings to the claimant for a period of three months reckoning her monthly income at Rs.2,500/-. The claimant is, therefore, entitled to a further sum of Rs.7,500/- towards loss of earnings. Since it is found that the monthly income of the claimant is liable to be reckoned as Rs.5,000/-, the claimant is entitled to a further sum of Rs.7,200/- towards continuing permanent disability also. Thus, the claimant is entitled to a further sum of Rs.14,700/- towards additional 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.

6. In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.14,700/- 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.

Sd/-
P.B.SURESH KUMAR
JUDGE

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