

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

MACA.No.20 of 2014 ()

**AGAINST THE AWARD IN OPMV 1350/2008 of ADDL.MACT, ALAPPUZHA.
DATED 27-02-2013**

APPELLANT /PETITIONER :

**THANKAMMA,
W/O.RAVEENDRAN
KIZHAKKETHIL FROM KALATHILCHIRA ARUN NIVAS,
VANDANAM, ALAPPUZHA.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SRI.K.J.SHARATH KUMAR**

RESPONDENT(S)/RESPONDENTS :

- 1. JIHANUDDEEN T E
S/O.IBRAHIMKUTTY HAJI,
U.P.HOUSE, THATTAMPALLY P.O.
ALAPPUZHA-688013.**
- 2. THE NATIONAL INSURANCE CO.LTD,
REP.BY ITS DIVISIONAL MANAGER,
DIVISIONAL OFFICE ALAPPUZHA-688001.**

**R1 BY ADV. SRI.P.JACOB MATHEW
R2 BY SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

VS

P.B.SURESH KUMAR, J

M.A.C.A.No.20 of 2014

Dated this the 5th day of February, 2015

JUDGMENT

The claimant in an application for compensation before the Motor Accidents Claims Tribunal has come up in this appeal, challenging the quantum of compensation granted to her.

2. The claimant is a house wife. She was aged 64 years at the time of accident. The accident took place on 31.5.2008. The claimant sustained various injuries including compound fracture of both bones of her left leg in the accident. She claimed a sum of Rs.90,000/- by way of compensation in the proceedings. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.28,450/- as compensation and accordingly an award was passed for the said amount. Since the vehicle involved in the accident was covered by a valid Insurance Policy at the time of accident, the insurer of the vehicle was directed to satisfy the award. The claimant is aggrieved by the

quantum of compensation granted by the Tribunal and hence this appeal.

3. Heard the learned Counsel for the appellant/claimant and the learned Counsel for the second respondent/insurer.

4. Ext.A6 is the copy of the discharge certificate issued to the claimant from the Medical College Hospital, Alappuzha. Ext.A6 indicates that the claimant sustained compound fracture of both bones of her left leg and an open wound of 2x2 cm. on her right leg. Ext.A6 also indicates that the claimant was treated at the Medical College Hospital, Alappuzha as an inpatient for the period from 31.5.2008 to 7.6.2008. Ext.A8 is a disability certificate issued by Dr.V.A.Bindulal, Assistant Professor in Orthopaedics, Medical College Hospital, Alappuzha. In Ext.A8, the disability of the claimant was assessed at 13%. Ext.A8 recites that there is 1 cm shortening of the left leg of the claimant due to malunion. 20° limitation of knee flexion, 10° limitation of ankle dorsiflexion and plantar flexion of left ankle are also noted in Ext.A8. The Tribunal

reckoned the disability of the claimant at 10% and granted a sum of Rs.10,000/- by way of compensation for the functional disability sustained by her. In addition, she was granted a sum of Rs.10,000/- by way of compensation for the pain and sufferings and a sum of Rs.6,000/- towards loss of earnings, reckoning the notional income of the claimant at Rs.3,000/- per month. A sum of Rs.800/- was awarded towards the bystander's expenses also.

5. The claimant being a lady aged 64 years at the time of accident and in so far as she has sustained compound fracture of both bones of her left leg and as she was hospitalised for about 8 days, I feel that she is entitled to some more amount by way of compensation for pain and sufferings, which I fix at Rs.10,000/-. In view of the functional disability noted by the doctor who has issued Ext.A8 disability certificate, according to me, she is entitled to some amount by way of compensation for loss of amenities and enjoyments in life also, which I fix at Rs.10,000/-. For the functional disability, the Tribunal has granted only a sum of Rs.10,000/- which according to me

shall be enhanced to Rs.15,000/-. The claimant is therefore entitled to a further sum of Rs.5,000/- on this head. Thus the claimant is entitled to a further sum of Rs.25,000/- by way of compensation.

In the result, the appeal is allowed in part and the award in favour of the claimant is modified granting her a further amount of Rs.25,000/- by way of compensation. Needless to say, the claimant is entitled to interest also for the enhanced compensation at the same rate at which the interest was granted by the Tribunal for the compensation awarded, except for the period of delay in filing the appeal, namely 101 days as ordered in C.M.Appln.No.22 of 2014.

Sd/-
P.B.SURESH KUMAR,
JUDGE

/TRUE COPY/

PA TO JUDGE

VS