

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

MACA.No. 1291 of 2015 ()

AGAINST THE AWARD IN OP(MV) NO.890/2012 of ADDL. D.C. & SESSIONS COURT -
VII, ERNAKULAM DATED 31-07-2014

APPELLANT(S)/3RD RESPONDENT:-:

UNITED INDIA INSURANCE COMPANY LIMITED
ERNAKULAM, NOW REPRESENTED BY ITS DEPUTY MANAGER
REGIONAL OFFICE, "SHARANYA", HOSPITAL ROAD
KOCHI - 11.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENT/PETITIONER:-:

IMELDA K.A.
D/O.ALOCIOUS K.P., KALLUVEETIL HOUSE
NEAR PETROL PUMP, THOPPUMPADY, KOCHI - 682 005.

R1 BY ADV. SRI.R.SUDHISH
R1 BY ADV. SMT.M.MANJU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON 08-10-2015 DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**

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M.A.C.A.No.1291 of 2015

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Dated this the 8th day of October, 2015

JUDGMENT

Anu Sivaraman, J.

The appellant is the third respondent in O.P.(MV) No.890 of 2012 before the III Additional Motor Accident Claims Tribunal, Ernakulam. The sole respondent is the claimant in the personal injury claim preferred before the Tribunal. She had contended that on 16.11.2011, at about 6.30 am, when she was pedalling her bicycle, a car bearing registration No.KL-43/B-2070 owned by the first respondent, driven by the second respondent and insured by the third respondent hit against her bicycle, causing her to fall on the road. As a result of the accident, she suffered severe injuries and she filed the claim petition seeking a total compensation of Rs.1,50,000/-.

2. Respondents 1 and 2 before the Tribunal, who were the owner and driver of the car remained ex parte. The third respondent insurer filed a written statement admitting the existence of a valid policy, but denying negligence of the second respondent and alleging that the accident occurred due to the negligence of the appellant. The appellant produced and marked Exts.A1 to A11, but, no oral evidence was

adduced on either side. After considering the pleadings and the materials on record, the Tribunal held that the driver of the motor car was negligent and that the insurer is liable to satisfy the award. An award of compensation under various heads amounting to Rs.98,125/- was passed by the Tribunal, which is impugned in this appeal by the insurer on the ground that the quantum is excessive.

3. We heard Sri.Mathews Jacob, learned Senior Advocate appearing for the appellant and Smt.M.Manju, learned counsel for the sole respondent/claimant. The only question that arises for consideration is with regard to the quantum of compensation awarded by the Tribunal. It is contended by the learned Senior Counsel appearing for the appellant that there is absolutely no justification for the award of Rs.10,000/- as compensation for 'loss of study', Rs.10,000/- towards extra nourishment, Rs.10,000/- towards the future treatment and Rs.25,000/- towards loss of amenities over and above the compensation awarded towards pain and suffering, treatment and incidental expenses. Learned Senior Counsel would contend that the main injury suffered by the claimant was the fracture of two teeth apart from superficial lacerations and bruises and that the appellant was treated as an inpatient in Gautham Hospital, Kochi only

for two days, that is, she was admitted on 16.11.2011 and discharged on the very next day. It is also contended that no reasons are given by the Tribunal for awarding a compensation of nearly Rs.1,00,000/- in a case where the injuries are trivial in nature and no disability has occurred.

4. Smt. M. Manju, learned counsel appearing for the respondent would contend that the appellant was a plus two student aged 17 years at the time of the accident, that she fell face down on the tarred road as a result of the accident and suffered severe dis-figuration and fracture of two teeth as a consequence. Her entire face was bruised. Ext.A5 Accident Register-cum-Wound Certificate shows that she had lacerated wounds inside her lower lip, apart from fracture of two teeth and extensive cuts and bruises all over her face as well as injuries on other parts of the body. The counsel for the respondent would further submit that the respondent had to be put on a restricted liquid diet for a prolonged period due to her facial and oral injuries and the dental treatment undergone by her. Annexure A9 treatment summary of Dr.Jessal's Dental Clinic showing that root canal treatment and capping was done on two teeth with advice for further orthodontic treatment after 18 months was not seriously assailed by the insurer. It is submitted that the photographs of the facial injuries had been

produced before the Tribunal and documentary evidence produced to prove the nature and extent of injuries and the dis-figuration suffered by the claimant.

5. We have gone through the pleadings and the materials on record and considered the arguments advanced on either side. Though the injuries suffered by the respondent are not so serious or life threatening, we are of the opinion that the age of the respondent is also to be taken into account while awarding compensation in cases of personal injury. The loss of teeth and extensive bruising to the face of a 17 year old girl would have caused considerable mental agony and despair to her, apart from pain and suffering. Learned counsel appearing for the appellant submitted that after award of the entire medical expenses incurred, which were supported by documentary evidence and a further sum of Rs.20,000/- towards pain and suffering and Rs.25,000/- for loss of amenities, the further grant of amounts towards future treatment, compensation for loss of study and Rs.10,000/- towards extra nourishment were clearly excessive and unjustified. It is submitted that the Tribunal is enjoined to grant reasonable compensation in motor accident cases and the amount awarded in this case is exorbitant and excessive. The learned counsel for the respondent seeks to justify the award of compensation on the

ground that the appellant had produced evidence before the Tribunal to show the extent of the injuries as well as the treatment undergone by her. Though she was treated as an inpatient only for two days, she thereafter had to undergo treatment at a Dental Clinic which was continuing even when the claim petition was filed. Since the appellant had to be put on a special fluid diet for a prolonged period due to the nature of her injuries and could not attend school during the above period, the award of the compensation under the heads extra nourishment and loss of study were perfectly justified, it is submitted. We find that the claim petition specifically states that the dental treatment of the appellant is continuing even on the date of the same. Root canal treatments and permanent capping having been undergone by the petitioner and having regard to the recommendation for future orthodontic treatment in Annexure A9, we are of the opinion that the amount of Rs.10,000/- granted towards extra nourishment and further amount of Rs.10,000/- granted towards future treatment expenses can be sustained. Moreover, it was contended by the counsel for the appellant that because of the disfiguring injuries suffered by the appellant and due to the need for continuing dental treatment she could not attend classes for nearly a month and was thus entitled to be compensated in some measure for the difficulties undergone by her.

No evidence was adduced to prove the loss of attendance. However, we notice that it is an admitted fact that the appellant was a student of Higher Secondary and was at a crucial juncture in her education. In view of the extensive facial and oral injuries suffered by her, we are of the opinion that the reduction of the compensation granted by the Tribunal would not be justified. Though the appellant had not suffered any permanent disability or disfigurement as a result of the accident, we are of the opinion that the award of total compensation of Rs.98,125/- is just and reasonable taking into the account the age of the appellant also. We therefore decline to interfere with the impugned award. The appeal fails and is accordingly dismissed. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj