

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

MACA.No. 74 of 2014 (B)

O.P.(MV)NO.186/2008 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MANJERI

APPELLANT/PETITIONER :-

**UMMER, S/O.ABDU,
MOOCHIKKAL HOUSE,
VELLIYANCHERI,
EDAPPATTA, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.VENUGOPAL (1086/92)
SMT.T.J.MARIA GORETTI**

RESPONDENTS/RESPONDENTS :-

- 1. SHAMSUDHEEN, S/O.MOHAMEDALI,
KODUVALLI HOUSE, CHERATTAKULAM,
EDATHANNATTUKARA.P.O.,
PALAKKAD DISTRICT - 678 601.**
- 2. V.SUBAIR, S/O.KUNHAMMED,
VADAKKETHIL HOUSE, K.N.BAZAR,
KOTTACKAL PO., MALAPPURAM DISTRICT - 676 503.**
- 3. THE UNITED INDIA ASSURANCE COMPANY LIMITED,
BRANCH OFFICE, KILIYAMANNIL PLAZA,
UP HILL POST, MALAPPURAM DISTRICT - 676 123.**

**R1 BY ADV. SRI.P.S.ANISHAD
R2 BY ADV. SRI.SAJU J.VALLYARA
R3 BY ADV. SMT.RAJI T.BHASKAR
R BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J

M.A.C.A.No.74 of 2014

Dated this the 17th day of March, 2015

JUDGMENT

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

2. The claimant sustained injuries in an accident took place on 24.05.2007. He was a coolie aged 42 years at the time of accident. The claimant was traveling in a stage carriage and the accident occurred on account of the collision of the said stage carriage with a lorry which was coming from the opposite direction. It was alleged in the claim petition that the accident occurred on account of the negligence of the first respondent, the driver of the lorry. The compensation was therefore claimed from the owner, driver and insurer of the lorry.

3. The first respondent remained ex-parte. The third respondent, the insurer of the lorry alone contested the claim petition. The Tribunal though found that the claimant sustained injuries in the accident and he is

entitled to a sum of ₹35,673/- by way compensation, passed an award only for a sum of ₹17,837/- on the ground that the claimant has not established that the accident occurred on account of the negligence of the first respondent. According to the Tribunal, in the said circumstances, the liability has to be apportioned among the drivers of the vehicles involved in the accident. The claimant is aggrieved by the said decision of the Tribunal and hence this appeal.

4. Heard the learned counsel for the appellant and the learned counsel for the third respondent.

5. The first information report in the crime registered in connection with the accident was produced as Ext.A1. Ext.A1 indicates that a crime was registered in connection with the accident alleging that it is on account of the negligence of the first respondent that the accident had occurred. No other evidence was let in by any of the parties. It is seen that it is on account of the reason that the claimant had not produced the final report in the crime, the Tribunal found that the claimant had not established that the accident had occurred on account of

the negligence of the first respondent. True, the claimant had not produced the final report in the case registered in connection with the accident. But, merely for the reason that the claimant had not produced the final report in the crime, it cannot be held that the accident was not on account of the negligence of the first respondent. In the absence of any other evidence which would show that it is not on account of the negligence of the first respondent the accident was occurred, according to me, the Tribunal should have accepted the case of the claimant, especially when the proceedings before the Tribunal is a summary proceedings intended to the benefit of the victims of the motor accidents.

6. Coming to the quantum of compensation, Ext.A2 is the wound certificate of the claimant. The Tribunal found that the claimant had suffered loss of four teeth. No compensation is seen granted for the said disability. True, the said disability may not affect the earning power of the claimant, but that does not mean that he is not entitled to compensation for the said disability. According to me, the Tribunal should have awarded compensation

for the said disability of the claimant as well. On an evaluation of the entire facts and circumstances, I am of the view that the claimant is entitled to a sum of ₹10,000/- towards compensation for continuing the said disability. Thus, the claimant is entitled to a total sum of ₹45,673/- towards compensation.

In the result, the appeal is allowed in part. The award of the Tribunal is modified permitting the claimant to recover a sum of ₹45,673/- by way of compensation from the third respondent. Needless to say, the claimant will be entitled to interest also for the enhanced compensation at the same rate at which the interest was awarded by the Tribunal for the compensation granted, except for the period of delay in filing the appeal, viz., 610 days as ordered in C.M.Application No.86 of 2014.

Sd/-
P.B.SURESH KUMAR
JUDGE

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//TRUE COPY//

P.A. TO JUDGE