

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

MACA.No. 1149 of 2013 ()

AGAINST THE AWARD IN OPMV 320/2008 of MACT MUVATTUPUZHA DATED 19-03-2013

APPELLANT(S)/PETITIONER:

GEEVARGHESE CHERIAN
AGED 18 YEARS, S/O. CHERIAN T.A, THARAYIL HOUSE
KAROOR, PAZHOO P.O, PIRAVOM
ERNAKULAM DISTRICT - 686 664 (MAJORITY OF THE
PETITIONER/APPELLANT DEECALARED BY THE
MACT MUVATTUPUZHA AS PER ORDER IN I.A 1821/2013 DATED
16/05/2013)

BY ADV. SRI.P.P.RAJESH

RESPONDENTS/RESPONDENTS:

1. S. SREENIVASAN
AGED 57 YEARS, S/O. SREEDHARAN, AYYANATTU HOUSE,
PARAYAKAD P.O, THURAVOOR, CHERTHALA
ALAPPUZHA -0 688 540.

2. SHIREESH S.
AYYANATTU HOUSE, PARAYAKKAD P.O, THURAVOOR
CHERTHALA, ALAPPUZHA - 688 540.

3. NATIONAL INSURANCE COMPANY LIMITED
1ST FLOOR, AJAY VIHAR, M.G. ROAD
KOCHI, ERNAKULAM -682016.

4. ORIENTAL INSURANCE COMPANY LIMITED
PALAKKAT BUILDING, MARKET JUNCTION, TRIPUNITHURA.

R3 BY ADV. SRI.A.A.MOHAMMED NAZIR

R4 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 21-12-2015, ALONG WITH MACA. 1157/2013, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDHAN, JJ.**

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M.A.C.A. Nos. 1149 and 1157  
of 2013

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Dated, this the 21st day of December, 2015

JUDGMENT

Ramachandra Menon, J.

Both these appeals arise out of a common cause of action in relation to the road traffic accident occurred on 11.03.2008. Claimants/appellants are the father and son respectively. Claimant in MACA No. 1149 of 2013 was proceeding as a pillion rider on the motorcycle ridden by his father, who is the appellant in MACA No. 1157 of 2015. While so, when the vehicle reached the spot of occurrence, a tipper lorry bearing registration No. **KL 04 V 2001** driven, owned and insured by the respondents 1 to 3 respectively came from the opposite direction and hit against the motorcycle, causing injuries to the claimants, which was sought to be compensated by filing separate claim petitions.

2. Driver and owner of the lorry did not choose to contest the matter, and hence they were set ex parte. The matter was contested by the Insurance Company, only on general grounds.

Evidence adduced before the Tribunal consists of Exts. A1 to A13. Nobody was examined from either side. On conclusion of the trial, the Tribunal fixed the negligence on both the sides at the ratio of 80:20, and the 3rd respondent/insurer of the tipper lorry was directed to satisfy 80% of the award amount.

3. Coming to the quantum of compensation awarded, injuries sustained by both the riders involved fracture and such other instances. Injuries sustained by the rider of the motor cycle, who was the claimant in O.P.(M.V) No. 315 of 2008, have been discussed in paragraph 13, which refers to comminuted fracture of shaft of the left femur at middle 3rd joint and contusion and abrasions over chest. He was hospitalized for nearly two weeks from 11.03.2008 to 24.03.2008. In the other case, i.e. in respect of the claimant in O.P.(M.V.) No. 320 of 2008, as discussed by the Tribunal in paragraph 14 of the Award, he sustained undisplaced fracture to the 5th metatarsal bone of the left foot and he was hospitalized for 'one day' and was discharged accordingly.

4. In the case of the rider of the motorcycle, which was the subject matter of O.P.(M.V.) No. 315 of 2008 [MACA No. 1157 Of 2013], the following amounts were awarded by the Tribunal under different heads:

Loss of earning	: Rs.18,000/-
Pain and sufferings	: Rs.20,000/-
Loss of amenities	: Rs.15,000/-
By-stander expenses	: Rs. 1,400/-
Extra nourishment charges	: Rs. 2,000/-
Transportation charges	: Rs. 1,500/-

It is seen that only a sum of Rs.3000/- was reckoned by the Tribunal as the monthly income of the claimant, for want of any positive evidence with regard to the avocation or income. But it has to be borne in mind that the claimant is owning a motorcycle and is maintaining his family. We find that a notional figure of Rs.5000/- can be reckoned for fixing the compensation under the head loss of earning. On reworking the compensation for loss of earning it will come to Rs.30,000/- [Rs.5000 x 6], and after giving credit to the amount of Rs.18000/- already granted by the Tribunal, the appellant is entitled to get balance compensation of **Rs.12,000/-** under this head. Considering the nature of injuries sustained, the amounts awarded by the Tribunal under the head 'pain and sufferings' and 'loss of amenities', viz. Rs.20000/- and Rs.15000/- respectively, are on the lower side. We find it fit and proper to enhance the same to Rs.25000/- each, thus resulting a

balance of **Rs.5000/-** and **Rs.10,000/-** respectively under the above heads. Accordingly, in respect of MACA No. 1157 of 2013, the enhanced compensation will come to **Rs.27,000/- [Rupees Twenty Seven thousand only]**.

5. Coming to MACA No. 1149 of 2009, arising out of O.P. (M.V.) No. 320 of 2008, the amounts awarded under different heads are as given below :

Loss of studies	: Rs.1500/-
Pain and sufferings	: Rs.7000/-
General expenses	: Rs.1500/-

There is no case that the injuries have resulted in any disability. Hospitalization was only for a period of 'one' day. However in view of the fact that a minor boy, who sustained undisplaced fracture to the 5th metatarsal bone of the left foot, would have suffered excruciating pain; and that a sum of Rs.7000/- alone has been awarded by the Tribunal towards pain and sufferings; we find it fit and proper to grant a further sum of **Rs. 8000/-** under this head. Similarly, we find it fit and proper to grant a sum of **Rs.10,000/-** towards loss of amenities, thus resulting enhancement of compensation by **Rs.18,000/- [Rupees Eighteen thousand only]** in respect of MACA No. 1149 of 2013.

5. There is a contention for the appellants that the Tribunal has not awarded any amount under the head of medical expenses, despite producing the bills, which comes to a sizable extent. The learned counsel for the appellants sought to place reliance on the decision rendered by a single Judge of this Court in **National Insurance Co. Ltd. Vs. Bijumon [2011 (2) KLT 20]**, holding that the amounts obtained under separate medical insurance policy is not liable to be deducted, while considering the claim petition preferred in respect of a road traffic accident. Correctness and sustainability of the above decision was considered by a Division Bench of this Court in **National Insurance Co. Ltd. Vs. Akber Badsha and Ors. [2015 (5) KHC 27 (DB)]** (to which one of us was a member) and held that the Insurance Company is entitled to set off the amount satisfied in respect of the medical bills with regard to the same injuries under a 'medicclaim policy' and that the maximum eligible extent under such circumstances is only to the extent of premium satisfied in this regard. In the said circumstances, the said contention does not require to be considered. It is made clear that, if any certificate as to the details of the premium paid towards the medicclaim policy is produced before the 3rd respondent, the said amount shall also be satisfied by

the Insurance Company, so as to meet the ends of justice.

7. Coming to the actual amount payable, we find that, based on the available materials on record, the Tribunal apportioned the liability in the ratio of 80 : 20, i.e. fixing 20% negligence on the part of the claimants. We do not find any reason to interfere with the said findings and in the said circumstances, the appellants will be entitled to get only 80% of the enhanced compensation. It is made clear that the appellants will be entitled to get interest @ 9% in respect of the balance compensation. Since the policy stands admitted, we direct the 3rd respondent insurance company to deposit the due amount within one month from the date of receipt of copy of this judgment.

Both the appeals are disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K. NARENDRA,
JUDGE**

kmd

/True copy/

P.A. to Judge