

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

MACA.No. 1300 of 2015 ()

**(AGAINST THE AWARD IN OP(MV).NO. 1350/2004 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOZHIKODE DATED 12-11-2008)**

APPELLANT/PETITIONER:-

**MUHAMMED,S/O.MOIDEEN, AGED 50 YEARS,
RESIDING AT KALUKKAMCHALIL HOUSE,
P.O.VALIYAPARAMBU, KODUVALLY, KOZHIKODE.**

BY ADV. SMT.K.V.RESHMI

RESPONDENT/2ND RESPONDENT:-

**NATIONAL INSURANCE CO. LTD.,
57, THIRUVIKA, INDL ESTATE,
GUINDY, CHANNAI - 600 032,
REPRESENTED BY ITS MANAGER.**

**BY ADVS. SMT.DEEPA GEORGE
SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

P.B.SURESH KUMAR, J.

M.A.C.A.No.1300 of 2015

Dated this the 26th day of June, 2015

JUDGMENT

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 10.11.2003. The claimant was aged 40 years at the time of accident. A sum of Rs.60,000/- 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.8,500/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to

satisfy the award. The claimant is aggrieved by the said award.

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

4. Ext.A2 is the wound certificate of the claimant. The Tribunal found that the claimant sustained fracture of lateral malleolus. The Tribunal also found that as part of the treatment, below knee cast was applied on the claimant. Towards loss of earnings, it is seen that the Tribunal has granted only sum of Rs.3,000/- to the claimant. Since below knee cast was applied, the claimant would have been immobilized at least for a period of 45 days. As such, the claimant is entitled to loss of earnings at least for a period of two months. Since the accident took place in the year 2003, it is reasonable to reckon his monthly income at Rs.4,500/-. The claimant is, therefore, is entitled to a further sum of Rs.6,000/- towards loss of earnings.

Towards pain and sufferings, despite the fact that the claimant has sustained fracture of lateral malleolus, the Tribunal has granted only a sum of Rs.3,500/-. According to me, the compensation granted towards pain and sufferings is unreasonably low. Having regard to the injury sustained by the claimant, I am of the view that he is entitled to a further sum of Rs.11,500/- towards pain and sufferings. Towards loss of amenities, only a sum of Rs.500/- is seen granted by the Tribunal. The claimant being a coolie, in the absence of any compensation granted for continuing disability, according to me, the claimant is to be adequately compensated towards loss of amenities and enjoyments in life. On an evaluation of the entire materials on record, the claimant is granted a further sum of Rs.9,500/- towards loss of amenities and enjoyments in life. Thus, the claimant is entitled to a further sum of Rs.27,000/- towards compensation.

5. It is seen that interest has been granted by the

Tribunal for the compensation awarded only at the rate of 7% 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.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.27,000/- 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, except for the period of delay in filing the appeal, viz., 2280 days, as ordered in C.M.Application No.1453 of 2015.

P.B.SURESH KUMAR, JUDGE.

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