

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

MACA.No. 1302 of 2015 ()

AGAINST THE AWARD IN OPMV 2014/2006 of PRINCIPAL MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOZHIKODE DATED 08-12-2009

APPELLANT/PETITIONER:

K.K. PRASANNAN AGED 46 YEARS
S/O. NEELAKANDAN, KALLIKUNNUMMAL HOUSE
P O KOTTAPARAMBA, MEDICAL COLLEGE(VIA),
KOZHIKODE

BY ADV. SMT. K.V. RESHMI

RESPONDENT/3RD RESPONDENT:

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
REG OFFICE , ICICI BANK TOWERS, BANDRA
KURLA COMPLEX, BANDRA(EAST) MUMBAI-400051
REPRESENTED BY ITS MANAGER

BY ADV. SRI. R. AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.1302 OF 2015

DATED THIS THE 9th DAY OF DECEMBER, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The appellant is the claimant in O.P.(MV)No.2014/2006 on the file of the Principal Motor Accident Claims Tribunal, Kozhikode. It was an application filed under Section 166 of the Motor Vehicles Act, seeking compensation for the injuries sustained by him in a motor accident occurred on 23.7.2006.

2. On the date of accident, the appellant was travelling in a car bearing registration No.KL-13/K-3676, which dashed against a lorry and capsized causing serious injuries to him. The 1st and 2nd respondents before the Tribunal are the registered owner and driver of the offending vehicle. The respondent herein is the insurer of the said vehicle. The appellant filed claim petition claiming compensation under different heads.

3. Before the Tribunal, Exts.A1 to A5 were marked on the side of the appellant and Ext.B1 was marked on the side of the respondents. On an appreciation of the facts and circumstances of

the case, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the vehicle by its driver. The respondent being the insurer of the vehicle was held liable to pay the amount of compensation. Under different heads, the Tribunal awarded a total compensation of ₹21,327/- and directed the respondent insurer to pay the aforesaid amount together with interest @ 7% per annum from the date of petition till date of deposit together with cost of ₹600/-. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant is before this Court in this appeal.

4. We heard arguments of the learned counsel for the appellant and also the learned counsel appearing for the respondent insurer.

5. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal under different heads represents a just and reasonable compensation.

6. From the pleadings and materials on record, it is seen that at the time of accident, the appellant was aged 38 years.

The Tribunal fixed the monthly income of the appellant at ₹2,000/-. Though the appellant would contend that he was a carpenter by profession, earning a monthly income of ₹7,000/- per month, he has not produced any materials in support of the aforesaid contention. However, considering the fact that the accident occurred in the year 2006 and that the appellant was an able bodied person aged 38 years, we refix his monthly income at ₹4,000/- per month.

7. Towards loss of earning, the Tribunal awarded a sum of Rs.2,000/-. As borne out from Ext.A2 wound certificate, the appellant sustained the following injuries: Depressed fracture of left frontal bone, fracture(R) Ankle contusioned right ankle lacerated wound left eye brow contusion over chest wall (L). Ext.A3 discharge summary would show that the appellant was admitted in the hospital and discharged on 1.8.2006. Considering the nature of injuries sustained by the appellant, we deem it appropriate to compute loss of earning for a period of four months. Accordingly, the compensation towards loss of earning is refixed as ₹16,000/- (i.e., 4000x4). In the result, the

appellant is entitled for an additional compensation of **₹14,000/-** under this head.

8. Towards bystander's expenses, the Tribunal awarded a sum of ₹750/-. Considering the nature of injuries sustained and the period of hospitalisation, we deem it appropriate to refix the compensation under the aforesaid head as ₹1,500/-. In the result, the appellant will be entitled for an additional compensation of **₹750/-** under this head.

9. Towards pain and suffering, the Tribunal awarded a compensation of ₹15,000/-. Considering the nature of injuries as borne out from Ext.A2 wound certificate and the treatment he had undergone, as borne out from Ext.A3 discharge summary, we deem it appropriate to refix the compensation under this head at ₹20,000/-. Thus, the appellant will be entitled for an additional compensation of **₹5,000/-** under this head.

10. Towards loss of amenities, the Tribunal awarded only an amount of ₹1,500/-. As we have already noticed, the appellant sustained serious injuries in the accident, as borne out from Ext.A2 wound certificate. Considering the nature of injuries

sustained by the appellant, we deem it appropriate to refix the compensation towards loss of amenities at ₹20,000/-. Accordingly, the appellant will be entitled for an additional compensation of **₹17,500/-** under this head.

11. In the result, the award passed by the Tribunal is modified, granting the appellant an additional compensation of **₹37,250/-**.

12. The Tribunal awarded interest @ 7% per annum from the date of petition till date of deposit. In **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9)**, taking note of the fact that the Nationalised Banks are granting interest at the rate of 9% per annum on fixed deposits for one year, the Apex Court directed that, the compensation amount refixed shall bear interest at the rate of 9% per annum from the date of the claim. Considering the principle laid down in the aforesaid decision, we deem it appropriate to refix the rate of interest for the additional compensation awarded in this appeal at 9% per annum from the date of petition till date of deposit, ignoring the period of delay of 1888 days in filing this appeal, which was

condoned as per order dated 29.9.2015 in C.M.Application No.1455/2015 on a specific condition that in case enhancement is ordered, the appellant would not be entitled to get interest for the period covered by the delay.

13. Since the policy is admitted, the respondent insurer shall deposit the additional compensation awarded in this appeal together with interest within one month from the date of receipt of a copy of this judgment.

The appeal is disposed of as above.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

dsn

True copy

P.S.to Judge