

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

MACA.No. 1303 of 2015 ()

OPMV 1632/2009 of M.A.C.T.,KOZHIKODE

APPELLANT/PETITIONER:

SOUMINI, AGED 41 YEARS

W/O. MOHANAN, POLAKKUNNATH HOUSE, PANNIKKODE VIA
MUKKAM, KOZHIKODE- 673 602.

BY ADV. SMT.K.V.RESHMI

RESPONDENT/3RD RESPONDENT:

BAJAJ ALLIANCE GENERAL INSURANCE COMPANY LTD.
5TH FLOOR, M SANS ARCADE, CHEROOTY ROAD
KOZHIKODE - 673 032.

BY ADV. SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.1303 of 2015

Dated 10th July, 2015.

J U D G M E N T

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 tailor. The accident took place on 26.6.2009. The claimant was aged 36 years at the time of accident. A sum of Rs.1,00,000/- 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.38,253/- 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. The claimant sustained, among other injuries, fracture of left posterior lateral wall, fracture of inferior wall of her left orbit and fracture of spine. She also suffered post traumatic vertigo in the accident. Ext.A2 is the wound certificate produced by the claimant before the Tribunal. Ext.A5 is the reference card issued to the claimant from the Medical College Hospital, Kozhikode. Ext.A5 indicates that the claimant was admitted and treated in the hospital in connection with the injuries sustained by her from 26.6.2009 to 3.7.2009. Ext.C1 is the disability certificate issued to the claimant by the Medical Board certifying her permanent disability at 7%.

5. Despite Ext.C1 disability certificate, the Tribunal has not granted any compensation to the claimant for continuing permanent disability. The reason for declining compensation for continuing permanent disability is that the claimant had not adduced any evidence to show that she is earning any income. The Tribunal also, it seems, carried away

by the statement in Ext.C1 certificate that there is no occupational disability.

6. The fact that the claimant sustained the injuries referred to above in the accident is not in dispute. The claimant, as noticed above, is a tailor. True, it is stated in Ext.C1 that there is no occupational disability. But, that does not mean that the claimant is not entitled to compensation for continuing permanent disability suffered by her in the accident. According to me, even in a case where the person concerned is unemployed, compensation for continuing permanent disability has to be granted by arriving at a notional income. In the instant case, the case of the claimant is that she is a tailor. The Apex Court has held in **Ramachandrappa v. Manager, Royal Sundaram Alliance Ins. Co. Ltd.** (2011 ACJ 2436) that in the case of persons who are unable to produce any evidence to prove their income, their income has to be notionally taken at Rs.4,500/-. In the instant case, the accident took place in the year 2009. In the absence of any evidence to prove the income of the claimant, I am of the view that the claimant is entitled to

compensation for continuing permanent disability, reckoning her notional monthly income at Rs.3,500/- and disability at 7%, applying the multiplier '15'. The claimant is therefore, entitled to Rs.44,100/- towards compensation for continuing permanent disability ($3,500 \times 12 \times 7 \times 15/100$). It is seen that the claimant had undergone inpatient treatment in the hospital for 8 days. Only a sum of Rs.1,200/- is seen granted towards bystander's expenses. Since the accident took place in the year 2009, I am of the view that the claimant is entitled to a further sum of Rs.800/- on that head. Thus, the claimant is entitled to a further sum of Rs.44,900/- towards compensation.

7. 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.44,900/- 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., 1328 days, as ordered in C.M. Application No.1456 of 2015.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)