

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

MACA.No. 792 of 2011 ()

**(AGAINST THE AWARD IN OP(MV).NO. 1909/2007 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOZHIKODE DATED 06-05-2010)**

APPELLANT/PETITIONER:

**P. PRADEEP KUMAR, AGED 39 YEARS,
S/O.LATE BALAN, NATU VAYAL COLONY LAKSHAM VEEDU,
PURAKKATTIRI, THALAKKULATHOOR POST, KOZHIKODE.**

BY ADV. SRI.V.S.CHANDRASEKHARAN

RESPONDENT(S)/RESPONDENTS:

- 1. THE MANAGING PARTNER, M/S.ESSAR,
JMJ APARTMENTS, 11/70-A, WYNAD ROAD,
KUTTIADI POST OFFICE, VADAKARA, KOZHIKODE-673 008.**
- 2. SIJU.P.K., AGED 24 YEARS,
S/O.KUNJAPPA NAMBIAR, PUTHUKANDIYIL HOUSE,
KAVILUMPARA POST OFFICE, KOZHIKODE-673 010.**
- 3. THE NATIONAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, NOOR COMPLEX, MAVOOR ROAD,
KOZHIKODE-673 003.**

R3 BY ADV. SRI.E.M.JOSEPH

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESHKUMAR, J.

M.A.C.A.No.792 OF 2011

Dated this the 19th day of February, 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 26.4.2007. The claimant was aged 39 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation by the claimant. The Tribunal, though found that the claimant is entitled to a sum of Rs.28,351/-, passed an award in favour of the claimant only for a sum of Rs.19,846/-, holding that the claimant has also contributed for the cause of the accident to extent of 30%. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer of the vehicle 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 issued to the claimant. The Tribunal noticed that the claimant sustained fracture of ribs 3, 4, 5, 6, 7, fracture left clavicle, loss of one tooth, mobility to four teeth, etc. Ext.A3 discharge summary issued to the claimant from the Medical College Hospital reveals that the claimant was admitted and treated therein as inpatient for 21 days. Ext.C1 disability certificate issued to the claimant by the Medical Board certifies that the claimant is suffering from 2% disability.

5. The Tribunal granted only a sum of Rs.4,500/- to the claimant towards loss of earnings. The claimant being a coolie, he is expected to do hard jobs. According to me, the Tribunal should have granted compensation to the claimant for loss of earnings at least for a period of three months, reckoning his monthly income at Rs.4,500/-. The claimant is therefore, entitled to a further sum of Rs.9,000/- towards compensation for loss of earnings. Towards compensation for continuing permanent disability, the Tribunal granted a sum of Rs.10,800/-, reckoning the monthly income of the claimant at Rs.3,000/-, and the disability of 2%, applying the multiplier '15'. If the

monthly income of the claimant is reckoned as Rs.4,500/-, the claimant will be entitled to a further sum of Rs.5,400/- towards compensation for continuing permanent disability. Towards pain and sufferings, the Tribunal granted only a sum of Rs.10,000/-. In the nature of the injuries sustained by the claimant and the treatment undergone by him, I am of the view that the claimant is entitled to a further sum of Rs.5,000/- towards compensation for pain and sufferings. Towards compensation for loss of amenities and enjoyments in life, the Tribunal has not granted any compensation at all. On evaluation of the nature of the injuries sustained by the claimant, I am of the view that the claimant has to be granted a sum of Rs.5,000/- towards compensation on that head. Towards extra nourishment, only a sum of Rs.300/- is seen granted by the Tribunal. According to me, the claimant is entitled to a further sum of Rs.1,700/- towards compensation on that head. The Tribunal granted only Rs.2,000/- towards bystander's expenses. It is beyond dispute that the claimant had undergone inpatient treatment for a period of 21 days. Since the accident took place in the year 2007, I am of the view that he is entitled to a further sum of Rs.3,250/- towards compensation for bystander's expenses. Thus, the claimant is entitled to a further sum of

Rs.29,350/- towards compensation. It is seen that the Tribunal has granted interest for the amount awarded by way of compensation only at the rate of 7% per annum. Since the accident took place in the year 2007, I am of the view that the claimant is entitled to interest for the amount awarded by way of compensation at the rate of 9% per annum.

6. Coming to the aspect of the contributory negligence, the Tribunal came to the conclusion that the claimant had also contributed for the cause of the accident to the extent of 30% solely based on the statement in Ext.A2 wound certificate that smell of alcohol was found in the breath of the claimant at the time when he was taken to the hospital. Merely for the reason that smell of alcohol was found in the breath of a person, it cannot be said that he was negligent in the matter of causing the accident. In the instant case, neither the claimant nor the respondents gave oral evidence in the proceedings and the award is passed based on the documents produced by the parties. In the absence of any evidence of negligence on the part of the claimant, the finding rendered by the Tribunal that the claimant was also responsible for causing the accident is unsustainable and liable to be vacated.

In the result, the finding of the Tribunal that the claimant was also

responsible for the cause of the accident to the extent of 30% is vacated. The quantum of compensation granted by the Tribunal to the claimant is also enhanced to Rs.57,701/-. (Rs.28351/- + Rs.29,350/-). The claimant will also be entitled to interest at the rate of 9% per annum for the amount of compensation granted to him, except for the period of delay in filing the appeal, namely 237 days, as ordered in the C.M.Appln.No.1258/2011.

P.B.SURESHKUMAR, JUDGE

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