IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

MACA.No. 1320 of 2015 (F)

AGAINST THE AWARD IN OPMV 918/2005 of PRL. M.A.C.T.,KOZHIKODE
DATED 11-05-2009

APPELLANT/PETITIONER :

P.VASANTHAKUMARI, AGED 54 YEARS,
W/O.ASHOKAN, AISWARYA, THALAKKULATHOOR POST,
KOZHIKODE 673317.

BY ADV. SMT.K.V.RESHMI

RESPONDENT/2ND RESPONDENT :

THE NATIONAL INSURANCE COMPANY LTD.,
DIVISIONAL OFFICE-II, KOZHIKODE 673001,
REPRESENTED BY ITS MANAGER.

BY ADV. SRI.P.G.GANAPPAN
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1320 of 2015

Dated this the 3rd day of December, 2015

JUDGMENT

Ramachandra Menon, J.

This is an appeal preferred by the claimant before the M.A.C.T., Kozhikode being aggrieved by the inadequacy of the compensation awarded, granting a total sum of ₹86,000/- in respect of the injuries sustained in a road traffic accident occurred on 19.2.2005.

2. As a matter of fact, the award was passed as early as on 11.5.2009, whereas the appeal was filed with a petition to condone the delay of 2055 days in filing the same. The reason stated in the affidavit of the party is that the lawyer, who was appearing before the Tribunal, had entrusted the matter with one Santhosh Kumar, who happened to be the clerk of the lawyer who is representing the party before the High Court. But the Clerk did not entrust the matter and had misappropriated the amounts given to him in connection with the filing of the appeal.

The party herself says in the affidavit that she contacted the lawyer only after about 5 ½ years and it was only then she was given to understand that no proceedings were taken and that there was similar other cases as well, finally leading to filing of a complaint by the lawyer against her own clerk, ultimately leading to cancellation of registration of her clerk. After the alleged entrustment of the case, absolutely no effort was taken by the claimant or the lawyer who represented her before the Tribunal with regard to the follow up steps as to the filing of the appeal. The first attempt in this regard itself was admittedly after several years. It has been alerted by the Apex Court on many an occasion that the 'reason' for the delay is important, which is to be considered for condoning the delay. However, the delay happened to be condoned by this Court when the matter came up for consideration on 4.8.2015 observing that, if at all any enhancement is ordered, the appellant would not be entitled to get interest for the period of delay.

3. The accident in the instant case was occurred on 19.2.2005. The appellant, who was a Junior Public Health Nurse,

was standing on the side of the road, when she was knocked down by a bus bearing No.KL-11/S-6528 owned and driven by the 1st respondent before the Tribunal and insured by the respondent herein. The injury was sought to be compensated by filing claim petition. The owner-cum-driver of the bus did not choose to contest the matter and was set exparte. The claim was resisted on general grounds by the respondent Insurance Company. No oral evidence was adduced from either side. Available evidence consists of Exts.A1 to A6 marked from the part of the claimant and Ext.C1 copy of the disability certificate issued by the Medical Board certifying the extent of disability as 30%. Based on the materials on record, it was held by the Tribunal that the accident was only because of the negligence on the part of the owner cum driver of the bus and proceeded to fix the quantum of compensation accordingly.

4. The claim put forth before the Tribunal was that, by virtue of the employment of the appellant, she was having a monthly salary of ₹12,500/- and that in view of the permanent disability caused to an extent of 30%, as certified by Ext.C1,

much adverse circumstances have already been resulted. But it is quite discernible from the discussion made by the Tribunal that the appellant did not appear before the Tribunal for any assessment, nor did she take the minimum effort to depose the facts and figures before the Tribunal enabling the opposite side to cross-examine her. The observations made by the Tribunal in paragraphs 7 and 8 are in the following terms:-

> "**7.** Issue No.2 :- Ext.A2 is the wound certificate. The petitioner was 45 years old. As per Ext.A2 she had sustained fracture on zygoma, multiple fractures on maxilla and lacerated injury on orbital region. CT scan was taken. No intra cranlal injury or skull fracture was revealed. No brain is affected depriving her from continuing her profession. But the fracture of zygoma and maxilla was confirmed. She had inpatient treatment 14 days as per column No.13. Ext.A4 series are medical bills for Rs.11,990/-. Another set of medical bills for Rs.1,30,262/- are also produced. These documents consisting of bills collected from various hospitals like MIMS hospital and some medical shops without having medical prescriptions. The genuineness of these bills is

> yet to be proved. However it appears that she had undergone treatment as zygoma and maxilla were fractured. The fractures are sustained to facial bone. Petitioner wanted to get nose corrected as per Ext.A5 discharge card. As per Ext.A6 series she had undergone treatment for watering eye, developed due to reduction of facial fractures. Some of the bills are not signed or authenticated. Some of the bills are computer printed bills. However, considering the nature of injury sustained and nature of treatment availed reasonable amount towards treatment can be granted.
>
> **8.** Exts.A5 and A6 are discharge cards indicating that she had developed problems with right eye and she had availed treatment from MIMS hospital and Baby Memorial hospital. 5 days inpatient treatment is noted in Ext.A5. But there is absolutely no reference in these documents that she lost eye vision and lost her employment. If she lost eye vision, it could have been physically verified. But she did not appear before the court."

5. It has been held that the appellant has totally failed in substantiating her case before the Tribunal, particularly with regard to the loss of income, if any, and also as to the reduction

of monthly income in any manner. Observing that no reduction in the salary has been resulted, the appellant being a Government employee, the Tribunal has held that the claimant was not entitled to have any compensation for disability (as the disability has not resulted in any loss of earning power or loss of income, in so far as the claimant was concerned). We find it difficult to agree with the said proposition for the reason that, even though the claimant was entitled to continue in service without any reduction in salary till attaining the age of superannuation (56 years), nothing could prevent the claimant in pursuing employment as a 'staff nurse' in some private establishment/hospital after her retirement, generating reasonable income. The permanent disability suffered by her because of the accident would definitely place a bar in getting the desired extent of salary, which requires to be compensated for the balance period, i.e., after the date of retirement. Even though no evidence has been adduced, we find it appropriate to reckon a notional figure of ₹4,000/- as the monthly income which would have been available after the date of retirement. Adopting a multiplier of '8', we fix the compensation for disability as ₹4,000 x 12 x 30/100 x 8 = **₹1,15,200/-**.

6. The amounts awarded by the Tribunal under other relevant heads, as given in paragraph 10 of the Award are as given below:-

Medical treatment	:	Rs.20,000/-
Incidental charge	:	8,000/-
Pain and suffering	:	12,000/-
Loss of amenity	:	35,000/-
Loss of notional income	:	10,000/-
Transportation	:	1,000/-
Total	:	Rs.86,000/-

7. The injuries sustained as dealt with in the previous paragraphs reveal that the compensation (₹12,000) awarded towards pain and suffering is inadequate and the same requires to be enhanced to ₹20,000/-. As such, we award a balance sum of **₹8,000/-** under this head as well. The total balance compensation payable in the said circumstances comes to **₹1,15,200+₹8,000**=**₹1,23,200/-** which is required to be satisfied with interest @ 9% per annum from the date of the

petition, except for the period of delay of 2055 days, in conformity with the order dated 04.08.2015 while condoning the delay.

Since the policy is admitted, we direct the insurance company to deposit the said amount within 'one month' from the date of receipt of a copy of this judgment.

The appeal stands disposed of accordingly.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

Sd/-
ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge