

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

MACA.No. 1361 of 2015 ()

AGAINST THE AWARD IN OPMV 575/2008 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, ERNAKULAM DATED 31-05-2014.

APPELLANT:

VILASINI PURUSHOTHAMAN AGED 59 YEARS
W/O.PURUSHOTHAMAN, PRATTIL HOUSE
NEAR BHAVAN'S VIDYA MANDIR, EROOR PO, NADAMA VILLAGE
KANAYANNOOR, TALUK, ERNAKULAM DISTRICT.

BY ADVS.SRI.MATHEWS K.PHILIP
SMT.T.MANASY

RESPONDENTS:

1. GIRISH K.R.
S/O.RAJAPPAN, KUDAPPANTHARA HOUSE
WEST TO CHANDIROOR GOVT. SCHOOL, CHANDIROOR.PO.
AROOR VILLAGE, CHERTHALA TLAK, ALAPPUZHA 688 537.

2. THE ORIENTAL INSURANCE COMPANY LTD
2ND FLOOR, PUTHENPURACKAL CHAMBERS, VELI
PALLURUTHY 682 006.

3. BIJOY KRISHNA B.S
BIJOY BHAVAN, KARAMANAN, MAKATHALA PO
KOLLAM 691 001.

R2 BY ADV. SMT.K.S.SANTHI (B/O, NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**

M.A.C.A. No.1361 of 2015

Dated this the 5th day of August 2015

JUDGMENT

Anu Sivaraman, J.

The appellant is the claimant in O.P.(M.V) No. 575 of 2008 on the file of the Additional Motor Accidents Claims Tribunal, Ernakulam. She had claimed compensation of Rs.2,50,000/- for the injuries sustained by her in an accident which had occurred on 8.3.2008. It was alleged in the claim petition that while she was a pedestrian on the Vytilla-Thripunithura road, a motor cycle bearing registration No. KL-2/Z 4453 driven and owned by the first respondent and insured by the second respondent had hit her and she had suffered an intertrochanteric fracture on the right leg and was admitted to Vijaya Kumara Menon Hospital, Thripunithura for 12 days. She claimed to be a fish vendor aged 53 having a monthly income of Rs.5,000/-.

2. The first respondent remained ex-parte and the second respondent insurer filed a written statement admitting the policy but disputing the negligence as well as the quantum of compensation claimed. Exts.A1 to Exts.A11 were produced and marked on the side of the appellant and she was examined as PW1. Considering the pleadings and the materials on record, the Tribunal held that the accident occurred due to the rash and negligent driving of the bike by the first respondent

and that the second respondent insurer was liable to satisfy the award. With regard to the income of the appellant, in the absence of any materials to prove her income, the monthly income was fixed notionally at Rs.4,000/-. She was awarded an amount of Rs.8,000/- towards loss of earnings, Rs.500/- each towards transportation and damage to clothing, Rs.1200/-towards extra nourishment, Rs.2,400/- for bystander expenses, Rs.15,000/- for pain and suffering and Rs.29,368/- towards medical expenses. Adding an amount of Rs. 10,000/- awarded for loss of amenities and enjoyment of life, a total amount of Rs.66,968/- was awarded by the tribunal. Being dissatisfied with the quantum of compensation awarded, the appellant has preferred this appeal.

3. Heard Sri. Mathews K. Philip, learned counsel appearing for the appellant and Smt. K.S.Santhi, learned counsel appearing for the second respondent.

4. The learned counsel for the appellant contended that the income claimed by the appellant before the tribunal was only reasonable and should have been accepted. It was also contended that due to the grave nature of injuries the appellant has been rendered unfit to work for a long time and this has not been taken note of by the tribunal in spite of the appellant giving oral evidence to that effect. The amounts awarded towards pain and suffering and loss of amenities are meagre and insufficient, it is submitted.

5. Per contra, learned counsel appearing for the second respondent insurer would contend that there was no evidence whatsoever adduced before the tribunal regarding the income of the claimant. In the circumstances, it is submitted that the acceptance of the notional income as Rs.4,000/- is perfectly justified. The learned counsel also seeks to sustain the award of compensation under the other heads as being reasonable.

6. It is not in dispute that the appellant who was aged 53 years and a fish vendor by profession had suffered intertrochanteric fracture in the accident which occurred on 8.3.2008. The discharge summaries produced by the appellants before the tribunal would indicate that she had to undergo open reduction and internal fixation and the leg had to be immobilized. She has been advised to report for review after 8 weeks on her discharge from the hospital. In view of the serious nature of the injuries and the age of the appellant, we are of the opinion that the appellant would have been disabled from working as a fish vendor for at least three months due to the injury sustained by her. We therefore deem it fit to award a further sum of Rs.4,000/- towards loss of earnings over and above the amount awarded by the tribunal.

7. It is also not in dispute before us that the appellant had undergone treatment as an inpatient for 12 days after the accident. In any view of the matter, we are of the opinion that taking into account the

seriousness of the injuries, the appellant would have suffered considerable loss of amenities and undergone considerable pain and suffering due to the injury sustained by her. In the above circumstances, we are of the opinion that the sum of Rs.15,000/- towards pain and suffering and Rs.10,000/- towards loss of amenities awarded by the Tribunal is inadequate. We therefore, award a further sum of Rs.10,000/- towards pain and suffering and a like sum of Rs.10,000/- for loss of amenities in life. The compensation awarded by the tribunal under the other heads does not, in our opinion, warrant any interference.

We accordingly allow the appeal in part and award an additional sum of Rs.24,000/- as compensation to the appellant/claimant over and above the compensation awarded by the Motor Accidents Claims Tribunal. The second respondent insurer shall deposit before the Motor Accidents Claims Tribunal the said sum together with interest at the rate of 9% per annum from the date of petition till the date of deposit, within two months from today. Upon such deposit being made, the entire amount deposited shall be released to the appellant/claimant. No costs.

Sd/-
P.N.RAVINDRAN
(JUDGE)

Sd/-
ANU SIVARAMAN
(JUDGE)

al/-

True copy

P.S to Judge