

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

MACA.No. 1398 of 2007 ()

AGAINST THE AWARD IN OPMV 599/2003 of MACT MUVATTUPUZHA DATED 00-00-0000

APPELLANT(S)/PETITIONER::

**SANTHA RAVI, W/O.RAVI
RESIDING AT EDAPARAMBIL HOUSE, MAMALAKANDOM
KUTTAMPUZHA VILLAGE, ERNAKULAM DISTRICT.**

**BY ADVS.SMT.ANEY PAUL
SRI.PHILIP J.VETTICKATTU**

RESPONDENT(S)/RESPONDENTS 1 TO 3::

- 1. ANIL SEBASTIAN
NELLICKAL HOUSE, KULAMAVU P.O., KOZHIPPALLY
IDUKKI DISTRICT.**
- 2. JINIL SEBASTIAN, S/O.SEBASTIAN,
NO.4/326 NELLICKAL HOUSE, KULAMAVU P.O.
IDUKKI DISTRICT.**
- 3. THE BRANCH MANAGER, THE NATIONAL
INSURANCE CO. LTD., UTHRADOM BUILDING, PULAMON P.O.
KOTTARAKKARA.**

R,R3 BY ADV. SRI.E.M.JOSEPH

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 04-08-2015, ALONG WITH MACA. 1479/2007, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

**P.R.RAMACHANDRA MENON
&
BABU MATHEW P.JOSEPH, JJ.**

M.A.C.A.No. 1398 of 2007

Dated this the 4th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Inadequacy of the compensation awarded by the Tribunal, in respect of the injuries sustained by the passenger in the bus is the subject matter of this appeal. This accident occurred on 29.12.2002, when the appellant herein was travelling in the bus bearing No.KL-8A/6789 on 29.12.2002. Because of the rash and negligent driving of the bus, it fell into a gorge causing injuries to many of its passengers leading to separate claims. All the claims were tagged together and the Tribunal arrived at a finding that the accident occurred only due to the negligence of the driver of the bus. After fixing the compensation under different heads, the same was directed to be satisfied by the Insurance Company with interest as specified. However, in view of the finding that the driver did not have a valid driving license to drive the vehicle at the relevant time and there was violation of the policy/statutory conditions, the Insurance Company was directed to satisfy the amount with the liberty to have the same recovered from the owner of the vehicle. The appellant

seeks to enhance the compensation awarded under various heads, stating that the compensation awarded by the Tribunal is abysmally low.

2. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the Insurance Company. Since the policy is admitted, we do not find it necessary to hear the owner or the driver and the notice stands dispensed with. The following amounts are awarded by the Tribunal under various heads:-

Loss of Amenities	:	Rs.6,000/-
Transportation	:	Rs.1,000/-
Clothing & Loss of articles	:	Rs.500/-
Extra nourishment	:	Rs.1,500/-
Bystander's Expense	:	Rs.1,500/-
Medical Expense	:	Rs.13,570/-
Pain & Suffering	:	Rs.15,000/-
Disfigurement	:	Rs.3,500/-
Loss of Amenities (loss of teeth)	:	Rs.5,000/-
Permenant Disability reckoning the same as 3% (though no disability certificate was produced)	:	<u>Rs.10,800/-</u>

TOTAL

Rs.58,370/-

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4. Considering the fact that the injured was a casual worker, we find it fit and proper to reckon the monthly income as Rs.3,000/-. As such, the loss of earning will become Rs.9,000/-; by virtue of which a balance amount of **Rs.3,000/-** more is payable after giving credit to the sum of Rs.6,000/- already awarded by the Tribunal. The injuries sustained by the claimant/appellant, as discussed by the Tribunal in paragraph 111 are as follows:-

“...partial amputation of the little and ring finger, lacerated wound on the right side of the forehead having a size of 12 cm, lacerated wound in the lower lip of 2cm, contusions in the lower lip, mobile teeth and zygoma fracture.”

5. Considering the extent of injuries, we find it proper to grant an additional sum of **Rs.1,500/-** over and above the amount awarded by the Tribunal taking the heads transportation and extra-nourishment together. The amount awarded by the Tribunal towards bystander's expenses will stand increased to Rs.3,000/- and as such a balance amount of **Rs.1,500/-** is payable under this head. Granting of a further sum of **Rs.7,500/-** will only be just and proper towards pain and suffering. We order it accordingly. Similarly, considering the disfigurement, partial amputation of little and ring finger,

and also the injuries sustained on the forehead, we grant a further sum of **Rs.6,500/-** under this head. The amount awarded by the Tribunal for the loss of amenities is only Rs.5,000/- which is quite inadequate and we enhance the same to Rs.10,000/-, as a result of which a further sum of **Rs.5,000/-** is payable to the appellant. Admittedly, no evidence has been adduced by the appellant to show the extent of disability, if any. No medical certificate is produced and the appellant also did not chose to mount the box. In the said circumstance, we find it difficult to accept the proposition mooted by the learned counsel on behalf of the appellant. However, taking the totality of the circumstance, we enhance the amount awarded by the Tribunal from Rs.10,800/- to Rs.15,000/-, thus resulting in a balance amount payable as **Rs.4,200/-**. The total enhanced compensation comes to Rs.29,200/- (Rupees Twenty Nine Thousand Two Hundred Only) which shall be satisfied with interest at the rate of 9% per annum from the date of filing petition before the Tribunal. The amount as above shall be deposited within one month. The appeal stands allowed to the said extent.

6. In view of the violation of the policy/statutory conditions in causing the vehicle to be driven without the

license and by virtue of the rights and liberties reserved by the Tribunal in favor of the Insurance Company, it is for the Insurance Company to satisfy the award amount and have the same recovered from the concerned respondents in accordance with law.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE

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PA TO JUDGE

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