

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. 1479 of 2007 ()

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AGAINST THE AWARD IN OPMV 656/2003 of MACT MUVATTUPUZHA DATED 17-08-2006
APPELLANT(S)/APPELLANT/PETITIONER::**

**JOSMY THOMAS (MINOR), REP.BY HER MOTHER
VETTICKAL HOUSE, MAMALAKANDOM, KUTTAMPUZHA VILLAGE
ERNAKULAM DIST., NOW R/AT VETTICKAL(H), KUDAYATHOOR
(MINOR) REP. BY HER MOTHER AND LEGAL GUARDIAN
THANKAMMA THOMAS, W/**

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

RESPONDENT(S)/RESPONDENTS 1 TO 4::

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- 1. ANIL SEBASTIAN & OTHERS
NELICKAL HOUSE, KULAMAVU P.O., IDUKKI DISTRICT.**
 - 2. JINIL SEBASTIAN, S/O. SEBASTIAN,
NELICKAL HOUSE, KULAMAVU P.O., IDUKKI DISTRICT.**
 - 3. THE BRANCH MANAGER,
THE NEW INDIA INSURANCE COMPANY LTD.
UTHRADOM BUILDING, PULAMON P.O., KOTTARAKKARA.**
 - 4. ADDL.4: THE BRANCH MANAGER,
THE NATIONAL INSURANCE CO. LTD., UTHRADOM BUILDING
PULAMON P.O., KOTTARAKKARA.**

**R,R3 BY ADV. SRI.JOY GEORGE
R,R3 BY ADV. SMT.PRAICY JOSEPH
R,R4 BY ADV. SRI.LAL GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

M.A.C.A.No. 1479 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.7,500/-
Transportation	:	Rs.750/-
Clothing & Loss of articles	:	Rs.500/-
Extra nourishment	:	Rs.1,000/-
Medical Expense	:	Rs.17,925/-
Disfigurement	:	<u>Rs.3,000/-</u>

TOTAL	Rs.58,370/-
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3. The nature and extent of the injuries sustained by claimant/appellant as discussed by the Tribunal in paragraph 167 are as follows:-

“..Fracture of Rt.angle, left mandible para symphysis of (Lt) condyle fracture undisplaced. Arch bar fixation done along with ORIF and IMF given”.

4. Considering the injuries as disclosed from Ext.A39 wound certificate, A40 treatment certificate and A41

discharge summary, this Court finds that the claim has been inadequately compensated and the same has to be enhanced to an appropriate extent. It is to be noted that, absolutely no amount has been awarded by the Tribunal towards pain and suffering and so also, nothing has been awarded towards the probable and possible disability could be resulted because of serious injuries involving different fractures to the left mandible as well as the right ankle. Based on the relevant facts and figures, we enhance the compensation for the loss of amenities from Rs.7,500/- to Rs.15,000/- and as such, a balance of **Rs.7,500/-** is payable under this head. Similarly, in respect of disfigurement, the Tribunal awarded only Rs.3,000/-. The injured being a minor girl, and since the injuries have been resulted to the left mandible, apart from the fracture to the right ankle, the amount awarded will stand enhanced to Rs.10,000/-, thus resulting in a deficit /additional sum of **Rs.5,000/-** . Considering the injuries sustained and the adverse consequences which could be resulted, we grant a sum of **Rs.10,000/-** under this head. The total additional compensation payable comes to Rs.29,500/- which shall be satisfied by the Insurance Company 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.

5. 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