IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

MACA.No. 1470 of 2015 ()

AGAINST THE AWARD IN OPMV 1313/2010 of M.A.C.T.,PERUMBAVOOR DATED 31-12-2014

APPELLANT(S)/PETITIONER:

ABDUL REHMAN, S/O.SULAIMANKUTTY
BAKKAT (H), PONJASSERY P.O., ARACKAPADY.

BY ADVS.SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY

RESPONDENT(S)/RESPONDENT NO.3:
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ORIENTAL INSURANCE CO LTD
BRANCH OFFICE, MANAPPAT BLDG., NORTH NADA
KODUNGALLOOR - 680 664.

R1 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R.RAMACHANDRA MENON
&
ANIL K.NARENDRAN, JJ.
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M.A.C.A.No.1470 of 2015

Dated this the 8th day of December, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

The claimant is the appellant before this Court. The grievance is against the quantum of compensation awarded limiting the same only to an extent of Rs.6,93,603/- ordered to be satisfied with interest at the rate of 8% per annum.

2. The case put up by the appellant/claimant before the Tribunal was that he was proceeding in the four wheeler truck bearing No.KL-7/BL-3465 owned, driven and insured by respondents 1 to 3 before the Tribunal. He was travelling in the said vehicle in his capacity as the owner of the goods carried in the truck and while so, on 6.5.2010 at about 6.45 a.m, the vehicle hit on the back side of a parked lorry, resulting in serious injuries to the appellant. This was sought to be compensated by filing the claim petition. The owner and driver of the vehicle did not choose to contest the matter and they were set ex parte. The Insurance Company contended that the appellant/claimant was a gratuitous passenger and was not entitled to have any coverage under the policy. Quantum and negligence were also subjected to challenge. The evidence adduced before the Tribunal consists of the documents produced as Exts.A1 to A16 series and Ext.X1 disability certificate, besides the oral

testimony of PW1 who was the Finance Manager of the Medical Trust Hospital, Ernakulam. The Tribunal arrived at a finding that the accident was due to the negligence on the part of the driver of the four wheeler truck.

3. The injuries sustained by the appellant are disclosed from paragraph 16 which is extracted below:-

“1. Pain left thigh with deformity
2. Epistaxis
3. Lacerated wound 3 cm upper hip
4. Swelling left knee
5. Fracture acetabulam
6. Fracture lateral femoral condyle left knee”

The treatments availed from the concerned hospital as detailed in paragraph 17 are relevant which are also extracted below:-

“6.5.2010 - Wound debridement + CR (L) hip, Left hip reduction not stable

7.5.2010 - OR(Lt) hip + ORIF (L) acetabulam, posterior wall with lag screws

15.5.2010 - RE debridement left knee

22.5.2010 - Excision of infected soft tissue defect left knee + ALT flap and SSG

10.6.2010 - RE debridement + desloughing by Plastic Surgeon

1.7.2010 - Distally based ALT flap reinsert + SSG by Plastic Surgeon.”

4. The disability certified by the Medical Board is to an

extent of 40% as disclosed from Ext.X1. The appellant was aged 68 years at the time of accident and as such, the multiplier was fixed as '5' and the compensation for disability was worked out reckoning the notional monthly income as Rs.4,000/- thus granting a sum of Rs.96,000/- under this head. The amounts awarded under different heads are as given below:-

Sl, No	Head of Claim	Amount Claimed	Amount Awarded	Details
1	Loss of Earnings	Rs,60,000	Rs.24,000	Rs.4000x6 months
2	Partial loss of earnings	NIL	NIL	
3	Transport to Hospital	Rs.10,.000	Rs.3,000	3 admissions
4	Extra nourishment	Rs,15,000	Rs.7,500	Rs.1250 x 6 months
5	Damages to clothes etc.	Rs.1,000	Rs.1,000	
6	Medical expenses & Attendant expenses	Rs.5,00,000 Rs.15,000	Rs.4,57,103 Rs.15,000	Actual medical bills 78 days claim admitted
7	Pain and suffering	Rs,1,00,000	Rs.50,000	3#s, other injuries
8	Loss of amenities etc.	Rs.1,00,000	Rs.35,000	
9	Disability	Rs.1,50,000	Rs.96,000	4000 x12 x 5 x 40%
10	Loss-Expectation of life	Rs.15,000	NIL	
11	Dis figuration	Rs.30,000	Rs.5,000	
12	Future Treatment	Rs.50,000	NIL	

Sl, No	Head of Claim	Amount Claimed	Amount Awarded	Details
	Total	Rs.1031,000 limited to 8,00,000	**Rs.6,93,603/-** =========	Rs.6,93,603/- along with interest @8% p.a

This is stated as inadequate by the appellant and hence the appeal.

5. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the Insurance Company.

6. During the course of hearing, it is brought to the notice of this Court that the case of the claimant as admitted before the Tribunal was that, he was returning in the vehicle/goods carrier after unloading the paper products owned by him and it was at this point of time that the accident occurred. This being the position, the appellant could have only been considered as 'gratuitous passenger' and is not entitled to have a benefit of statutory coverage under Section 157 submits the learned counsel. But the question is whether the said aspect should be considered by this Court in the instant case. It is conceded that the Insurance Company has not preferred any appeal and as such, the finding in the award passed by the Tribunal has become final. In the said circumstance, we do not find it necessary to go into the said aspect at all.

7. The appellant/claimant in fact has produced some evidence before the Tribunal as to the nature of business that was

being carried on. The certificate of registration of the establishment has been produced as Ext.A12, besides Ext.A13 series sales invoices. It is true that the appellant/claimant was doing some business and as such, the injuries could not have much adversely affected the business which was been carried out by the appellant as the same could have been pursued by various other ways and means. At the same time, it cannot be lost sight of that the injuries have resulted in serious extent of disability (by 40%) and this would have much adversely affected the mobility of the appellant/claimant and in turn the prospects in the business. There is no much dispute with regard to the nature of business and no evidence was adduced from the part of the respondents, whereas the appellant/claimant has satisfied his burden at least to an extent of producing relevant documents as to the registration of the establishment and the sale bills. We find that the income fixed by the Tribunal requires enhancement by 50%. On re-working the calculation as above, the figure comes to Rs.6000 x 12 x 5 x 40/100 = Rs.1,44,000/-. After giving credit of Rs.96,000/- awarded by Tribunal, the balance amount comes to **Rs.48,000/-**.

8. Various amounts have been awarded by the Tribunal under different heads as given in the table in 'paragraph 33', which is reproduced below:-

Sl, No	Head of Claim	Amount Claimed	Amount Awarded	Details
1	Loss of Earnings	Rs,60,000	Rs.24,000	Rs.4000x6 months
2	Partial loss of earnings	NIL	NIL	
3	Transport to Hospital	Rs.10,.000	Rs.3,000	3 admissions
4	Extra nourishment	Rs,15,000	Rs.7,500	Rs.1250 x 6 months
5	Damages to clothes etc.	Rs.1,000	Rs.1,000	
6	Medical expenses & Attendant expenses	Rs.5,00,000 Rs.15,000	Rs.4,57,103 Rs.15,000	Actual medical bills 78 days claim admitted
7	Pain and suffering	Rs,1,00,000	Rs.50,000	3#s, other injuries
8	Loss of amenities etc.	Rs.1,00,000	Rs.35,000	
9	Disability	Rs.1,50,000	Rs.96,000	4000 x12 x 5 x 40%
10	Loss-Expectation of life	Rs.15,000	NIL	
11	Dis figuration	Rs.30,000	Rs.5,000	
12	Future Treatment	Rs.50,000	NIL	
	Total	Rs.1031,000 limited to 8,00,000	**Rs.6,93,603/-** =========	Rs.6,93,603/- along with interest @8% p.a

It is seen that a sum of Rs.24,000/- has been awarded towards loss of earning for 'six months', reckoning the monthly income as Rs.4,000/-. On reworking the compensation based on the enhanced income taken by this Court now, it will result in an **addition of**

<u>Rs.12,000/-</u>. The total balance compensation payable under the above two heads comes **<u>Rs.60,000/-</u>** (Rs.48,000 + Rs.12,000/-) However, it has to be noted that, in respect of the total medical expense of Rs.4,57,103/- a sum of Rs.50,000/- was directly paid by TTK Health Care Limited to the hospital authorities under a separate 'Medi claim policy'. The original bills were submitted to the said Company and only duplicate bills were attached to Ext.A1 certificate. A contention was raised from the part of the appellant/claimant that the amount obtained towards the medical expenses under a separate 'Medi claim policy', is not liable to be deducted as held by a single bench of this Court in ***National Insurance Company Limited V. Bijumon 2011 (2) KLT 20.*** Following the said dictum, the said amount was also included by the Tribunal and it was ordered to be satisfied by the Insurance Company. This Court finds that the scope of insurance coverage in respect of unexpected risks was explained by a Division Bench of this Court and it was specifically held, placing reliance on various judgments of the Supreme Court and other High Courts, that unlike life insurance policies, the cause of action for satisfying the liability under a **'Medi claim policy'** would arise only on occurrence of the accident/death. Once the medical expense is satisfied under a '**Medi claim policy**', no further cause of action survives to be compensated, but for the extent of premium paid for obtaining the

'**Medi claim policy'** as above. Accordingly, as per the decision reported in ***National Insurance Company Limited V. Akber Badshah 2015 (5) KHC 327*** (to which one of us was a member), the decision rendered by the single bench of this Court in 2011 (2) KLT 20 stands overruled. As such, this amount is liable to be deducted from the amounts directed to be satisfied. Thus the actual balance compensation payable to the appellant comes to **Rs.10,000/-**(Rs.60,000-Rs.50,000). The same is awarded accordingly. The said amount shall be satisfied with interest at the rate of 9% per annum from the date of petition, till deposit. Since the policy is admitted and the insurance company has not chosen to challenge the award, the said amount shall be deposited within 'one month' from the date of receipt of copy of this judgment. This appeal is disposed of. No cost.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
ANIL K.NARENDRAN
JUDGE

//TRUE COPY//

PA TO JUDGE

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