

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

MACA.No. 956 of 2011 ()

AGAINST THE AWARD IN OPMV 1646/2009 of M.A.C.T.,KOZHIKODE DATED 23-06-
2010

APPELLANT:

RAJAN T, SO/ KUNHARU,THAYYI PARAMBU
HOUSE, PUTHIYANGADIA AMSOM DESOM, P.O.EDAKKAD,
KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S):

1. DEEPAK C KDARAM, 6/567(8/225A)
P.O.ANNASSERY, THALAKKULATHOOR, KOZHIKODE.
2. THE ICICI LOMBARD, GENERAL INSURANCE CO.
LTD, CITY PLAZA, 2ND FLOOR
YMCA CROSS ROAD, KOZHIKODE.

R2 BY ADV. SRI.K.B.RAMANAND
R2 BY ADV. SRI.R.AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
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M.A.C.A. No.956 of 2011
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Dated this the 22nd day of July, 2015

JUDGMENT

Anu Sivaraman, J.

The appellant is the claimant in O.P.(MV).No.1646 of 2009 on the file of the Motor Accidents Claims Tribunal, Kozhikode. His case was that on 13.09.2009, while he was riding his bicycle from Pavangad to Puthiyangadi, the motor cycle bearing registration No.KL-11 AA 198 owned and driven by the first respondent collided with his cycle causing serious injuries to him. He alleged that the accident occurred due to the rash and negligent riding of the motor cycle by the first respondent and the second respondent being its insurer is liable to pay compensation. He claimed a total compensation of Rs.1,37,000/- from the respondents.

2. The second respondent filed a written statement admitting insurance but denying negligence, injury and the quantum of compensation claimed. The appellant produced Exhibits A1 to A7. Considering the pleadings and the materials on record, the Tribunal held that the accident occurred due to the negligence of the first respondent and that the second respondent insurer is liable to satisfy

the award. An amount of Rs.55284/- was awarded as compensation including Rs.35034/- towards treatment expenses, Rs.4000/- towards bystanders expenses, Rs.12000/- towards pain and suffering, Rs.3000/- towards loss of amenities to life and Rs.750/- and Rs.500/- towards transport to hospital and extra nourishment respectively.

3. We heard Smt.Emil Stanley, learned counsel for the appellant and Sri.K.B.Ramanand, learned counsel appearing for the second respondent. It is submitted by the learned counsel for the appellant that the appellant had produced Exhibit A7 series of medical bills totaling to Rs.46,349/-. After verifying the said series of bills and deducting bills for Rs.11,315/- on the ground that one such bill is not in the name of the appellant and some bills are invoices, the Tribunal awarded of Rs.35,034/- towards treatment expenses. As regards the injuries sustained, Tribunal found that the appellant had suffered Sub-Trochanteric fracture (Lt) femur (Comminuted), Type III A open fracture (Rt) Tibia and Lacerated wound on right leg and left knee. From the evidence produced, it was found that the appellant was taken to Baby Memorial Hospital, Kozhikode after the accident and later he was referred to and treated as an inpatient at Medical College Hospital, Kozhikode for a total duration of 165 days. The Tribunal has stated that the date of discharge in Ext.A3 is not clear and has taken the period of inpatient treatment as 40 days only. Moreover, the

serious injury and the consequent complications which occurred during the treatment have not been taken into account for assessing the compensation for loss of amenities and pain and suffering as well, it is submitted.

4. Per contra, learned counsel appearing for the respondent would submit that the appellant was a 65 year old man who was suffering from type II diabetes and the prolonged treatment in hospital was necessitated because of this pre-existing condition and that it was considering the said fact that the Tribunal has awarded compensation in the instant case. In the above view of the matter, it is submitted that the award of compensation is just and reasonable.

5. It is an admitted fact the appellant was aged 65 at the time of the accident. The serious nature of the injuries sustained by him are not in dispute. In awarding compensation for medical expenses, the Tribunal has taken Exhibit A7 series of medical bills into consideration. A perusal of Exhibit A7 bills would show that the appellant had undergone treatment at Medical College Hospital, Kozhikode from 13.09.2009 till April, 2010. A perusal of Exhibits A3 and A4 reference cards would also show that the appellant was initially treated as an inpatient from 13.09.2009 to 2.11.2009 and a surgery and open reduction and internal fixation was conducted on 30.09.2009. Exhibit A3 would show that he was re-admitted on 07.12.2009 and surgery for

removal of the implant was performed on 26.12.2009. Thereafter, it is seen during the post operative period he suffered complications and infection at the site of the surgery due to uncontrolled diabetes mellitus and he had to be put on antibiotics and his diabetes controlled before he could be discharged on 01.04.2010. He was also advised to continue medication and to return for review.

6. Exhibit A3 discharge summary/reference card clearly states that after removal of implants on 26.12.2009, the appellant suffered infection during the post operative period and due to uncontrolled diabetes mellitus, he suffered severe complications and had to be treated as an inpatient for a considerably long period of time. The date of discharge shown in Exhibit A3 is 01.04.2010, and there is no lack of clarity in the document. Though the discharge summaries produced by the appellant clearly show that he was treated as an inpatient for 165 days, the Tribunal has taken into account only 40 days of inpatient treatment for calculating the bystander's expenses. The refusal on the part of the Tribunal to award adequate compensation taking into account the 165 days of inpatient treatment undergone by the appellant is, in our opinion not justified. The appellant having suffered serious injuries in a motor accident due to tortious acts of the insured, was liable to be compensated in a just and reasonable manner for all the consequences of his injuries. Since he had succeeded in proving

165 days of inpatient treatment, we are of the opinion that the appellant is entitled to an amount of Rs.150/- towards expenses of a bystander per day for 165 days. Deducting the sum of Rs.4,000/- now awarded by the Tribunal, the appellant would be entitled to a further sum of Rs.20,750/- towards bystander's expenses.

7. The appellant who was aged 65 years at the time of accident had suffered serious injuries and had to undergo long hospitalisation due to the complications arising from the treatment. The Tribunal has awarded only sum of Rs.12000/- as compensation towards pain and suffering. In view of the nature of the injuries and the treatment undergone we are of the opinion that the appellant is entitled to an amount of Rs.25,000/- as compensation under this head. We therefore award an additional sum of Rs.13,000/- as compensation under this head. The appellant would definitely have suffered inconveniences and loss of amenities due to the serious nature of the injuries sustained by him. The Tribunal has awarded only a sum of Rs.3000/- towards loss of amenities of life. Going by the facts and circumstances of this case, we are of the definite opinion that the appellant is entitled to an amount of Rs.25,000/-, as compensation for loss of amenities. We therefore award a further sum of Rs.22000/- to the appellant under this head. The award of compensation under other heads does not, in our opinion, merit any interference.

We accordingly allow the appeal in part and award an additional sum of Rs.55,750/- as compensation to the appellant/claimant over and above the compensation awarded by the Motor Accidents Claims Tribunal. The second respondent insurer shall deposit the said sum together with interest at 9% per annum from the date of petition till the date of deposit, within two months from the date of receipt of a copy of this judgment. Upon such deposit being made, the entire amount deposited shall be released to the appellant/claimant. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj

