IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

MACA.No. 973 of 2011 ( )

(AGAINST THE AWARD IN OPMV 599/2006 of PRL.M.A.C.T.,KOZHIKODE DATED 24.04.2010)

APPELLANT/PETITIONER:

P. BINU, S/O. DAMODHARAN NAIR,
CHEROTTU HOUSE, P.O. PANAGALOOR, VIA THANOOR
MALAPPURAM.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S)/RESPONDENTS:
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1. VIJAY GUNJAL,
RESIDING AT BUILDING NO.33, FLAT NO.10, HPCL HSG COMPD
VASHI NAKA, CHEMBUR, MUMBAI DISTRICT.

2. NATIONAL INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, NOOR COMPLEX, MAVOOR ROAD
KOZHIKODE.

R2 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.

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M.A.C.A.No.973 OF 2011

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Dated this the 26th November, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Inadequacy of compensation awarded by the Tribunal is the subject matter of challenge in this appeal preferred by the claimant. The accident was occurred on 04.12.2005. When the appellant was proceeding on his motor cycle bearing No.KL.10/S.6229, he was knocked down by a car bearing No.MH.01/T-4964 stated as owned and driven by the first respondent , which in fact was insured by the second respondent Insurance Company. Serious injuries were caused, which was sought to be compensated by filing claim petition before the Tribunal. The case of the appellant was that he was working as a document writer with a monthly income of Rs.6000/-. The evidence adduced before the Tribunal consists of documentary evidence of Exts.A1 to A8 and Ext.C1 report of the Medical Board. No oral evidence was adduced from either side; nor is there any document produced from the part of the respondent Insurance Company. On conclusion of the trial, the Tribunal found that the accident was solely because of negligence on the part of the first respondent and proceeded to fix the compensation accordingly. Observing that the occupation or income of the claimant was not proved, a notional figure of Rs.2500/- was reckoned as monthly income. Considering the age of the claimant as 35 years, appropriate multiplier was fixed as 16. An amount of Rs.168000/- was awarded by the Tribunal towards loss of amenities, adopting 35% as the disability certified by the Medical Board. Granting amounts under various other heads, the Tribunal granted a total compensation of Rs.185331/-, which was directed to be satisfied with interest at the rate of 7% per annum from 20.03.2006, which is sought to be enhanced by filing this appeal.

2. The learned Counsel for the Insurance Company points out that the claim of the appellant was limited to Rs. Two lakhs; whereas the Tribunal has awarded a sum of Rs.185331/- and as such, the appellant is not justified to brand the award as an ***unjus***t one seeking for enhancement of compensation by this

Court. On going through the facts and proceedings, this Court finds that, it is true, that occupation of the appellant as a document writer was never proved and no evidence in this regard was adduced before the Tribunal. But even then, the accident was in the year 2005. Considering the age of the appellant and the economic facts and circumstances prevailing then and there, this Court finds that the notional monthly income fixed by the Tribunal is much on the lower side and we find it appropriate to have it enhanced to Rs.4000/-. This necessitates re-working of compensation under the relevant heads.

3. The amounts awarded by the Tribunal under different heads are as given below:

Head	**Amount (Rs.)**
Transportation of hospital	250
Extra nourishment	200
Loss of earnings	3750
Bystanders expenses	1200
Treatment expenses	1931
Pain and sufferings	10000
Loss of amenities	168000

Head	Amount (Rs.)
Total	**185331**

The injuries sustained by the appellant have been discussed by the Tribunal in paragraph '9', which reads as follows:

> *"Fracture base of skull, squamous temporal bone with this extra axial pneumocephalan, traumatic amputation of (L)3rd, 4th and 5th toe, fracture clavicle and middle ear pathology".*

4. By virtue of re-fixation of monthly income as Rs.4000/-, we find it appropriate to grant three months' income towards loss of earning,(considering the nature and extent of injuries); thus granting a sum of Rs.12000/-. After giving credit to the sum of Rs.3750/- awarded by the Tribunal, the balance figure comes to **Rs.8250/**-. In the case of bystanders' expenses, the Tribunal has reckoned '12' days as period of hospitalisation. In paragraph '9' of the award, apart from the above 12 days of hospitalisation from 04.12.2005 to 16.12.2005, there was a second spell of hospitalisation from 17.12.2005 to 07.01.2006(21 days), as mentioned in the last sentence of the very same paragraph. In

the said circumstance, we find it appropriate to grant a further sum of **Rs.2100/**-. The Tribunal has granted a sum of Rs.10000/- towards 'pain and suffering'. In view of the nature of injuries sustained and other consequences resulted, we find it appropriate to enhance the same by a further sum of **Rs.10000/**-. The compensation in respect of the disability based on the enhanced monthly income comes to Rs. 268800/- (4000 x 12 x16 x 35/1000)**.** After giving credit to the sum of Rs.1.68 lakhs, the balance figure under this head comes to **Rs.1,00,800/**-. It is seen that no amount has been awarded by the Tribunal towards permanent disability. Considering the entire facts and circumstances, we find it fit and proper to grant a sum of **Rs.25000/-** under this head as well. Thus, the total balance compensation payable comes to **Rs.1,46,150/**- (Rupees one lakh forty six thousand one hundred and fifty only), which shall be satisfied with interest at the rate of **9%** per annum from the date of petition till realisation, ***excluding the period of 318 days of delay*** in filing the appeal, as already ordered by this Court while condoning the delay on 06.03.2015. Since policy is admitted, the Insurance Company is directed to deposit the same within one month from the date of receipt of a copy of this judgment.

The appeal stands allowed to the said extent . No cost.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

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