

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

MACA.No. 1585 of 2007 ()

AGAINST THE AWARD IN OPMV 352/2002 of M.A.C.T., THALASSERY
DATED 01-12-2006

APPELLANT/PETITIONER::

SOORYAPRASAD, S/O.GOVINDAN,
AGED 29 YEARS, KANHANGADAN PUTHAN PURAYIL HOUSE,
KANHIRODE AMSOM, P.O. MOWENCHERRY, KANNUR DISTRICT.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT(S)/RESPONDENTS IN OP(MV) ::

* 1. SREELESH, S/O.GANGADHARAN,
SEENA NIVAS, MUZHAPPALA, P.O. MUZHAPPALA,
KANNUR DISTRICT. (*DELETED)

2. P.V. NAILA, D/O. VIJAYAN,
NAILA NIVAS, MUZHAPPALA P.O., KANNUR DISTRICT.

3. THE NEW INDIA ASSURANCE CO. LTD.,
NEAR MUNICIPAL BUS STAND, KANNUR.

R3 BY ADV. SRI.V.P.K.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 25-09-2015, ALONG WITH MACA. 1704/2007, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.Nos.1585 and 1704 of 2007

Dated this the 25th day of September, 2015.

JUDGMENT

Harilal, J.

These appeals are filed challenging the impugned award passed in O.P(MV) No.382/02 on the files of Motor Accidents Claims Tribunal, Thalassery. The above O.P. was filed under Section 166 of the Motor Vehicles Act by the appellant in M.A.C.A.No.1585/07, claiming compensation for the injuries suffered in a road traffic accident. The appellant in M.A.C.A.No.1704/07 was the 3rd respondent/ insurer in the above OP. M.A.C.A.No.1585/07 was filed on the ground that the compensation determined by the Tribunal is inadequate and disproportionate with the grievous nature of the injuries and the resultant permanent disability sustained by the petitioner; whereas, M.A.C.A.No.1704/07 was filed on the ground that the quantum of compensation determined by the Tribunal is exorbitant and unreasonable.

2. According to the appellant, on 8.12.2001 at about 8.30 A.M., while he was riding a motorcycle, when he reached near Arakkinar Pallippoyil West a bus bearing Regn.No.KL-13-3555 came from the opposite side in a rash and negligent manner, hit the motorcycle on which he was travelling and as a result, he was thrown away from the motorcycle and sustained severe injuries. He was subjected to a major operation in Dhanalakshmi Hospital, Kannur and thereafter he is suffering from Neurological deficit. He is unable to walk, sit or stand. In short, he is permanently disabled. The accident was caused by the rash and negligent driving of the bus by the 1st respondent and the 2nd respondent, who is the owner of the bus, is vicariously liable for the act done by the 1st respondent. The 3rd respondent Insurance Company is liable to indemnify the 2nd respondent. Thus, the respondents are jointly and severally liable to compensate the petitioner for the injuries suffered by him. He claimed an amount of Rs. 4,50,000/- as

compensation.

3. The respondents 1 and 2 are set ex parte. The 3rd respondent filed a written statement admitting the coverage of insurance policy of the bus, but disputed the age of the petitioner, monthly income, period of treatment, medical expenses, etc. It was also contended that the amount claimed under various heads are exorbitant. So also, the appellant was not having a valid driving licence at the time of accident.

4. On the above pleadings of the appellant, the appellant was examined as P.W.1 and two other witnesses were examined as P.Ws.2 to 4 and Exts.A1 to A3 were marked. No evidence was adduced by the respondents. After evaluating the evidence on record, the Tribunal passed the impugned award granting Rs.1,88,150/- as compensation to the appellant. The inadequacy of the quantum of amount fixed by the Tribunal is under challenge in this appeal.

5. The learned counsel for the appellant submits that the quantum of compensation fixed by the

Tribunal is inadequate and disproportionate with the grievous nature of the injuries and the consequential damage suffered by the appellant. The learned counsel advanced arguments focussing the inadequacy of the quantum of amount fixed towards monthly income, pain and suffering, loss of amenities and loss of earning capacity.

6. Per contra, the learned Standing Counsel for the 3rd respondent advanced arguments to justify the quantum of compensation awarded under various heads. According to him, the quantum of amount awarded under various heads are determined on the basis of evidence on record and the same stands in conformity of just compensation as envisaged under Section 168 of the M.V. Act.

7. In view of the rival contentions, the short question to be considered is, whether the appellant is entitled to get enhanced compensation under any of the heads under which the compensation has been determined by the Tribunal. Put it differently,

whether the total compensation awarded by the Tribunal stands in conformity with just compensation envisaged under Section 168 of the M.V. Act.

8. At the time of accident, the appellant was aged 24 years only. After analysing the police records, in the light of the oral evidence of P.Ws.1 and 2, the Tribunal arrived at a finding that the accident was caused by the rash and negligent driving of the bus by the 1st respondent. We do not find any reason to interfere with the said finding. According to the appellant, he is a construction worker from 1999 onwards and his wages was Rs.200/-. P.W.3, who had issued the salary certificate, was examined as the employer of the appellant. But, the Tribunal was not inclined to rely on the evidence of P.W.3 as such, in the absence of any other materials supporting his nature of employment, salary, etc. As rightly held by the Tribunal, if he was a construction worker, he could have produced documents evidencing membership in Construction Workers' Welfare Fund. But, at the same

time, we find that Rs.2,000/- fixed by the Tribunal is not sufficient and the same would stand enhanced to Rs.3,000/- per month.

9. The nature of treatment given to the appellant noted in Ext.A3 discharge certificate is shown below:-

“Shattered bone piece removed from the anterior wall of the maxilla. Zygomatic bone fracture reduction done intra orally, artiel plucking done. Open reduction of right hip dislocation and closed reduction of zygoma fracture done under general anesthesia on 8.12.2001. Immobilisation done. Suturing was removed on 10th day. Neurological deficit was persisting. Physiotherapy and electrical stimulation done. Passive mobilisation was also done. Further he was treated by applying medicine.”

10. Considering the grievous nature of the injuries and long duration of hospitalisation, the Tribunal is not justified in reducing the degree of disability to 10% from 20% assessed by the Doctor who treated the appellant and was examined as P.W.4. Hence, the percentage of disability stands enhanced to 15 instead of 10. Thus, the appellant is entitled to get a total compensation Rs.91,300/- under this head. After giving

credit to the amount granted by the Tribunal, the balance payable to the appellant is Rs.51,000/-. Considering the grievous nature of the injuries and the resultant disability the amount granted for pain and suffering and future treatment will stand enhanced to Rs.20,000/- each and the balance amount payable under these heads are Rs.5,000/- and Rs.10,000/- respectively. Thus the total amount payable to the appellant as compensation is Rs.66,000/-.

11. In M.A.C.A.No.1704/07 filed by the 3rd respondent Insurance Company, the main ground is that the Tribunal has erred in fixing the negligence solely on the part of the driver of the bus; but, Ext.B1 scene mahazar clearly shows the spot of accident at the middle of the road. The learned counsel for the appellant in the above appeal advanced arguments highlighting the negligence contributed by the appellant himself to the cause of accident. According to the learned counsel, contributory negligence ought to have been found and 50% of the negligence could

have been fixed on the appellant. Going by the impugned award, it is seen that at the time of accident the appellant was not duly licensed to ride a vehicle in public place. He had only a "learner's licence" to ride the motorcycle and he was not being instructed by a competent person sitting on his pillion as is mandatory under law. Having regard to the violation of law referred above and the spot of accident evidenced by scene mahazar, we are unable to brush aside the argument advanced by the learned counsel for the appellant in M.A.C.A.No.1704/07. We find that the appellant also contributed to the cause of accident to a some extent and thereby the negligence stands apportioned at 20% on the appellant and 80% on the 1st respondent.

12. On applying the above ratio, the appellant is entitled to get Rs.52,800/- only as enhanced compensation [66000-13200] i.e., $(66,000 \times 20/100)$. The appellant is entitled to get interest @ 8% per annum for the enhanced compensation. The 3rd

respondent/insurer is directed to deposit the compensation amount within a period of one month from the date of receipt of a copy of this judgment.

In the result, both the appeals are allowed in part.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.