

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 1476 of 2013 ()

AGAINST THE AWARD IN OPMV 957/2009 of MACT PALA DATED 23-03-2013

APPELLANT/PETITIONER:

ANSAR ALI,
S/O.RAHIM, METTIL HOUSE, MUNDATTUCHUNDAYIL HOUSE
POOVARANY P.O., POOVARANI VILLAGE, MEENACHIL TALUK
KOTTAYAM DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT (S) /RESPONDENTS:

1. DAVID JABARAJ,
S/O.BOAZ, DOOR NO.8B/44, CHINNATHIRUPATHI BHAGOM
PALLAKKAD, SALEM DISTRICT, TAMILNADU
PIN-636008.
2. BABU, S/O.MANUEL, 903, NALLATHAMBY COLONY
VANDIPERIYAR P.O., IDUKKI, PIN-685533.
3. THE NATIONAL INSURANCE CO.LTD.,
REP. BY ITS DIVISIONAL MANAGER, KOTTAYAM, PIN-686001.

R3 BY ADV. SRI.PMM.NAJEEB KHAN
SRI.M.A.GEORGE
R1&R 2 BY ADV. SRI.K.A.HASHIM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.1476 of 2013

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Dated this the 22nd day of June, 2015

JUDGMENT

Anu Sivaraman, J.

This appeal arises from the award dated 23.03.2013 passed by the Motor Accidents Claims Tribunal, Pala in O.P.(MV).No.957 of 2009. The appellant is the claimant before the Tribunal. The alleged accident occurred on 23.07.2009. The appellant who was a pedestrian was knocked down by a motorcycle bearing registration No.KL-37/1432 driven by the first respondent, owned by the second respondent and insured by the third respondent. He sustained the following injuries:

1. Comminuted sub trochantric fracture of left femur.
2. Comminuted distal radius fracture of left wrist.

He was hospitalised in the Medical College Hospital, Kottayam and treated as an in-patient for 12 days. He was aged 27 years at the time of the accident and was a bus driver by profession. The owner and driver of the motorcycle remained ex-parte. The third respondent insurer entered appearance and filed a written statement contending that the submission of the claimant as to his avocation and monthly income are not correct and that he was negligent himself as also stating the quantum of compensation claimed under various heads is excessive.

2. The Tribunal after considering Exts.A1 to A9 documents produced by the claimant as well as Ext.X1 disability certificate, held

that the claimant is entitled to a total compensation of ₹1,78,838/- under various heads. An amount of ₹18,000/- was awarded under the head loss of earnings for four months. ₹2,000/- was awarded towards transport to hospital, ₹1,000/- towards extra nourishment, ₹500/- towards damage to clothing, ₹2,400/- towards bystander expenses and ₹35,738/- towards treatment expenses according to the bills produced by the claimant. An amount of ₹22,000/- was granted towards pain and suffering and ₹97,200/- towards disability taking the percentage of disability as 10% and adopting a multiplier of 18. The Tribunal had taken the notional income of the appellant at ₹4,500/- in the absence of any documentary or oral evidence to substantiate the claim in the claim petition that he had an income of ₹8,000/- per month as a bus driver. Though Ext.X1 disability certificate showed that the appellant had suffered a whole body disability of 13%, the Tribunal had taken the disability as 10%.

3. We heard Sri. Abraham Mathew, learned counsel for the appellant and Sri. PMM Najeeb Khan, learned counsel for the third respondent. It is contended by the learned counsel for the appellant that the amounts granted towards compensation for pain and suffering and disability is too low in view of the injuries suffered by the appellant and the treatment undergone. It is also brought to our notice that no

amount has been awarded towards loss of amenities in spite of the serious nature of the injuries suffered by the claimant. The learned counsel appearing for the third respondent would contend that the evidence adduced by the claimant has been considered by the Tribunal and the amounts awarded are just and proper in the circumstances of the case. However, it is clear from the claim petition as well as the award passed by the Tribunal that the injuries suffered by the appellant, who was an able bodied man of 27 years and has claimed to be a bus driver by profession are serious in nature. No evidence was adduced to discredit his avocation by the third respondent. It is also seen from the award that an amount of ₹35,738/- claimed by the appellant towards medical bills have been awarded in full by the Tribunal. The Tribunal has also taken loss of earnings for a period of four months while awarding compensation. It is therefore clear that the injuries sustained by the appellant are of a serious nature. He had claimed an amount of ₹50,000/- towards pain and suffering. However, the Tribunal has awarded only an amount of ₹22,000/- under that head. Having regard to the injuries suffered by the claimant and the treatment undergone as an in-patient, we are of the view that a further sum of ₹3,000/- should be granted to the appellant towards pain and suffering.

4. We are of the considered opinion that the refusal of the Tribunal to grant any amount towards loss of amenities cannot be justified. In the above circumstances, in the nature of the injuries suffered by the appellant, we are of the opinion that a sum of ₹25,000/- has to be awarded towards loss of amenities. The counsel for the appellant submits that, Ext.X1 disability certificate issued by the Medical Board attached to the Medical College Hospital, Kottayam discloses that the claimant suffered 13% permanent whole body disability. However, the Tribunal has taken the disability of the appellant only at 10%. There is no justification in departing from the disability assessed by the Medical Board, except the vehement objection raised by the learned counsel for the insurer. We are therefore of the view that the appellant shall be compensated under the head disability by taking whole body disability at 13%. We therefore award the sum of ₹1,26,360/-. Deducting the compensation of ₹97,200/- already awarded by the Tribunal under that head the claimant would be entitled to an enhanced amount of ₹29,160/- towards compensation for permanent disability.

The appellant would therefore be entitled to a total enhanced compensation of ₹57,160/-. This appeal is allowed in part granting enhanced compensation of ₹57,160/- together with 9% interest

thereon to the appellant. The third respondent is directed to deposit the said amount before the Tribunal within two months from today deducting any amount already deposited. The appellant shall be entitled to withdraw the amount so deposited. The parties shall suffer their respective costs in this Court.

sd/-

P.N.RAVINDRAN, JUDGE

sd/-

ANU SIVARAMAN, JUDGE

kp/-

True copy

P.A.To Judge