IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

MACA.No. 436 of 2014

AGAINST THE AWARD IN OPMV 562/2010 of M.A.C.T.,KOLLAM DATED 21-02-2013

APPELLANT(S)/PETITIONWER:

RAJENDRAN PILLAI, AGED 43 YEARS,
S/O. GPALAPILLAI, RUGMINI SADANAM, MYLAKKADU P.O.,
KOTTIYAM, KOLLAM.

BY ADV. SRI.PRATHEESH.P

RESPONDENT(S)/3RD RESPONDENT:

THE DIVISIONAL MANAGER,
NEW INDIA ASSURANCE CO. LTD.,
KOLLAM- 691 001.

BY ADV. SRI.RAJAN P.KALIYATH
SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A. No.436 of 2014

Dated this the 5th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

The award passed by the Motor Accidents Claims Tribunal, Kollam, in O.P.(MV) No.562/2010 in respect of serious injuries sustained by the appellant involving amputation above the right knee compensated to an extent of ₹5,70,000/- is sought to be enhanced by filing this appeal.

2. On 22/9/2008 i.e., the date of accident, the appellant was stated as travelling in a mini lorry bearing Registration No.KL-2/AB-8714 along the Kollam - Thiruvananthapuram National Highway from west to east. When the appellant reached the place

of occurrence, a tipper lorry bearing Registration No.KL-17/C-7130 owned by the 1st respondent before the Tribunal and driven by the 2nd respondent which, in fact, was insured by the respondent/3rd respondent, came and hit against the mini lorry causing serious injuries. The gravity of the injury was of such extent, that the right leg of the appellant came to be amputated above knee. This made the appellant to prefer the claim petition for a total compensation of ₹7,00,000/- from the respondents before the Tribunal.

3. The 1st and 2nd respondents before the Tribunal did not choose to contest the matter and they were set ex parte. The claim was sought to be resisted by the Insurance Company on general grounds, however, raising a contention that the appellant/claimant was actually driving the mini lorry and was engaged in illegal transportation of river sand. By virtue of the nature of transportation, the mini lorry was stated as being driven in a tremendous speed which led to the

accident and not because of the negligence on the part of the driver of the tipper lorry insured by the Insurance Company. The extent of disability was also sought to be disputed alleging that the driver of the tipper had no valid badge to drive the tipper lorry and therefore violation of statutory/policy conditions was involved.

4. During the course of trial, the claimant was examined as P.W.1 and various documents were marked as Exts.A1 to A13. The driver of the tipper lorry produced Ext.B1 which was his driving licence authorsing to drive the type of vehicle involved in the accident. No evidence was adduced on the part of the Insurance Company. After analysing the facts and figures, the negligence was fixed solely on the driver of the tipper lorry insured by the respondent/Insurance Company. The extent of disability certified as per Ext.A10 disability certificate was of 50%. It was contended by the appellant/ claimant that since there

was amputation of right leg above knee, he sustained the disability of 70%, even as per the schedule to the Workmen's Compensation Act and since he was a driver, he had suffered 100% disability in pursuing the job of driver, which hence was sought to be compensated. The Tribunal, however, placing reliance on the verdict passed by this Court in Oriental Insurance Co. Ltd. v. Jayarajan [2013 ACJ 458] held that the claimant was in a position to do other works as well and hence the disability could not be reckoned as 100% under any circumstance. Even though a reference was made to the First schedule of the Workmen's Compensation Act, as to the extent of disability to be reckoned, the Tribunal fixed the same only as '50%'. Reckoning the engagement, as a driver, a sum of ₹5,000/- was taken as the monthly income and adopting the multiplier '15', a sum of ₹4,50,000/- was awarded for the permanent disability and loss of earning power. Granting such other amounts under different heads, the total compensation fixed as ₹5,69,600/- was directed to be satisfied by the Insurance Company with interest at the rate of 9% per annum. This is sought to be enhanced by filing this appeal as mentioned already.

5. Heard the learned counsel for the appellant and also the learned counsel appearing for the respondent/Insurance Company.

6. The fact remains that no positive evidence was adduced by the claimant to substantiate his income; but for his version rendered as P.W.1. However, considering the fact that the claimant was doing the job of the driver, by virtue of his driving licence produced as Ext.A9 and available materials on record and considering the further fact that the accident occurred was in the year 2008, the Tribunal reckoned ₹5,000/- as the monthly income. We do not find anything arbitrary or illegal in this regard. But coming to the extent of disability reckoned by the Tribunal,

there is no dispute to the fact that the right leg of the appellant was amputated above knee. Going by the First Schedule of the Workmen's Compensation Act (presently the Employees' Compensation Act) which could be taken as guideline, the extent of disability shown is '70%'. Though it can be said that the appellant can pursue other jobs, there cannot be any dispute to the fact that he cannot function as a driver any more. Despite the reference made to the First Schedule of the Workmen's Compensation Act, the Tribunal has chosen to reckon only 50% as the disability for which absolutely no reason is forthcoming from the discussions made by the Tribunal. We do not find any reason to have the extent of disability reduced and we find it appropriate to reckon 70% as the permanent disability, taking the First Schedule of the Workmen's Compensation Act as a guideline. On re-working the compensation as above, this Court finds that the loss towards permanent disability and loss of earning power has to be re-fixed as 5000 x 12 x 70/100 x 15 = ₹6,30,000/-, after giving credit to a sum of ₹4,50,000/-, the balance comes to ₹1,80,000/-. The same is awarded as the additional compensation. It shall be satisfied by the Insurance Company with interest at the rate of 9% per annum within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge