

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

MACA.No. 185 of 2009 ()

OPMV.2757/2002 OF PRL. MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE.

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APPELLANT/PETITIONER IN OPMV::

**A.V. KARTHIKEYAN, S/O.LATE VELAYUDHAN,
AGED 49 YEARS, RESIDING AT ALUVINGAL HOUSE,
"VYSHAK", P.O. OLAVANNA, CALICUT.**

BY ADV. SRI.K.M.JAMALUDHEEN.

RESPONDENTS/RESPONDENTS IN OPMV::

- 1. V.P. PRAKASAN, S/O.APPU, "VAIKUNDAM",
ANS ROAD, P.O. NALLALAM, CALICUT.**
- 2. P. NASEER, S/O.BUHARI, AGED 38 YEARS,
MAYAMPALLIPARAMBA, P.O. KALLAI, CALICUT.**
- 3. NATIONAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE-II, P.B. NO.811, NOOR COMPLEX,
MAVOOR ROAD, NEAR ARAYIDATHUPALAM, CALICUT.**

**R3 BY SRI.MATHEWS JACOB, SENIOR ADVOCATE.
BY ADV. SRI.P.JACOB MATHEW.**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

P.B.SURESH KUMAR, J.

M.A.C.A.No.185 of 2009

Dated this the 3rd day of August, 2015

JUDGMENT

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted by the Tribunal.

2. The claimant is a coolie. The accident took place on 27.8.2002. A sum of Rs.50,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.2,000/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance

policy, the insurer of the vehicle was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. Ext.A2 is the copy of the wound certificate produced by the claimant before the Tribunal. The injuries of the claimant as noted in Ext.A2 wound certificate are the following:

- 1) Small laceration 1x1x0.5 cm over the root of nose.
- 2) Abrasion over (L) elbow region.
- 3) Tenderness and swelling (L) elbow region.
- 4) Small lacerated wound 1x1x1 cm on elbow.

Ext.A3 is the reference card issued to the claimant from the Medical College Hospital, Kozhikode. Ext.A3 indicates that the claimant was admitted for treatment in the hospital on 27.8.2002 and discharged on 2.9.2002. The diagnosis of the claimant as recorded in Ext.A3 is Grade I open posterior lateral dislocation of left elbow. The Tribunal found that Ext.A3 is a manipulated document. I have meticulously

perused Ext.A3 discharge card produced by the claimant before the Tribunal. It does not appear to me that the same is manipulated in any manner. The award also does not indicate as to how the Tribunal came to the conclusion that Ext.A3 is a manipulated document.

5. As noticed above, the claimant is a coolie. He sustained dislocation of his elbow in the accident. He was treated as inpatient in the hospital for six days. The dislocation of the elbow would certainly affect the ability of the claimant to work as a coolie. As such, according to me, he is entitled to compensation for loss of earnings for a minimum period of three months. Since accident took place in the year 2002, I am of the view that the monthly income of the claimant is liable to be reckoned at Rs.3000/- for the said purpose. The claimant is therefore granted a sum of Rs.9,000/- towards loss of earnings. As noticed above, the claimant was treated as inpatient in the hospital for six days. The claimant, is therefore, entitled to compensation

towards bystander's expenses at the rate of Rs.200/-. The claimant is, therefore, granted a sum of Rs.1,200/- towards compensation on that head. As the claimant had suffered dislocation of his elbow and had undergone inpatient treatment for six days, I am of the view that the claimant is entitled to compensation towards extra nourishment also, which I fix at Rs.2,000/-. Towards pain and sufferings, having regard to the nature of the injuries sustained by the claimant and the treatment undergone by him, I am of the view that the claimant is entitled to a sum of Rs.7,500/- on that head. Likewise, towards loss of amenities and enjoyments in life, the claimant is to be granted a sum of Rs.2,500/-. Thus, the claimant is entitled to a total sum of Rs.22,200/- towards compensation. Since the claimant has been granted a sum of Rs.2,000/- , he is entitled to a further sum of Rs. 20,200/ towards compensation.

7. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of

7.5% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.20,200/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum. It is made clear that the insurer is entitled to recover additional compensation granted to the claimant from the owner of the vehicle involved in the accident as ordered by the Tribunal.

P.B.SURESH KUMAR, JUDGE.

smm