

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

MACA.No. 1134 of 2011 (C)

**(AGAINST THE AWARD DATED 02.09.2010 IN O.P.(MV) NO. 259/2007 of D.C. & SESIONS
& MACT,KALPETTA DATED 02-09-2010)**

APPELLANT/PETITIONER:

**M. ANEESH,
AGED 28 YEARS, S/O.C.MANI, POONTHALATH HOUSE,
KALPETTA POST, VYTHIRI TALUK, WAYANAD DISTRICT.**

BY ADV. SMT.CELINE JOSEPH

RESPONDENT/RESPONDENT NO.3::

**THE BRANCH MANAGER,
NEW INDIA ASSURANCE CO.LTD., M.G.T.BUILDINGS,
KALPETTA NORTH, WAYANAD DISTRICT.
(POLICY NO.760604/31/05/05976)**

**R1 BY ADV. SRI.RAJAN P.KALIYATH
R BY SRI.A.A.ZIYAD RAHMAN, SC**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DST

P.B. SURESH KUMAR, J.

M.A.C.A. No.1134 of 2011

Dated this the 4th day of February 2015

J U D G M E N T

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

2. The claimant is a Mason. The accident took place on 05.08.2006. The claimant was aged 24 years at the time of accident. He claimed a sum of Rs.1,00,000/- by way of compensation in the proceedings. The Tribunal, on an evaluation of the materials on record, found that the claimant is entitled to only a sum of Rs.20,250/- by way of compensation and accordingly an award was passed for the said amount. Since the vehicle involved in the accident was covered by a valid Insurance Policy at the time of the accident, the insurer was directed to satisfy the award. As noticed above, the claimant is aggrieved by the quantum of compensation determined

by the Tribunal and hence this appeal.

3. The fact that the claimant is a Mason is not seen disputed. Ext.A3 is the wound certificate of the claimant. It is recited in Ext.A3 that there was swelling and pain on his right knee at the time when he was brought to the hospital. Ext.A5 is the discharge card issued to the claimant from the Government Hospital, Kalpetta. In Ext.A5, it is recited that the claimant was admitted and treated as inpatient in the said hospital from 05.08.2006 to 19.08.2006. Ext.A6 is the prescription given to the claimant by one Dr. N.K. Hakkim. The Tribunal noticed that the claimant sustained chip fracture in the accident.

4. Towards loss of earnings, the Tribunal had granted only a sum of Rs.5,000/- to the claimant for a period of two months, reckoning his monthly income at Rs.2,500/-. In so far the accident took place in the year 2006, the monthly income of the claimant is liable to be reckoned at Rs.4,500/-. The claimant is therefore,

entitled to a further sum of Rs.4,000/- towards loss of earnings. Despite the fact that the claimant had sustained chip fracture and underwent treatment in the hospital for 14 days, the Tribunal had granted only a sum of Rs.10,000/- towards pain and sufferings. According to me, the claimant is entitled to a further sum of Rs.5,000/- towards compensation for pain and sufferings. Towards extra nourishment, only a sum of Rs.500/- is seen granted by the Tribunal. According to me, the claimant is entitled to a further sum Rs.1,000/- towards compensation for extra nourishment. It is seen that the Tribunal has not granted any compensation to the claimant for continuing disability. No compensation is seen granted for loss of amenities and enjoyments in life as well. In the nature of injuries sustained by him and the treatment undergone by him, I am of the view that the claimant is entitled to a minimum of Rs.10,000/- towards compensation for loss of amenities and enjoyments in life. Thus the claimant is entitled to Rs.20,000/- more towards

compensation.

In the result, the appeal is allowed in part and the impugned award is modified granting a sum of Rs.20,000/- more to the claimant towards compensation. Needless to say, the claimant is entitled to interest also for the enhanced compensation at the same rate at which the interest was granted by the Tribunal for the compensation awarded, except for the period of delay in filing the appeal, namely 179 days as ordered in C.M.Appln.No.1736 of 2011.

Sd/-
P.B. SURESH KUMAR
JUDGE

NS

/ True Copy /

P.A. To Judge