

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

MACA.No. 214 of 2009 (F)

AGAINST THE AWARD IN OPMV 1567/2002 of M.A.C.T.,KOZHIKODE
DATED 22-12-2007

APPELLANT/CLAIMANT:

SAJNA DEVAN, D/O.K.SAHADDEVAN,
AGED 25 YEARS, CHELLARIYAN HOUSE, ENTHOD P.O.
AROLI, PAPPINISSERI, KANNUR.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS:

1. B.A.KAMANUDEEN, SAFEER MANZIL,
KUMBALAM.

* 2. MUHAMMED SAFEER, SAFEER MANZIL,
P.O.KOTTOOLI, CALICUT. [**DELETED**]

3. THE NEW INDIA ASSURANCE CO.LTD.,
DIVISIONAL OFFICE, SILVER PLAZA BUILDING, MAVOOR ROAD
KOZHIKODE.

R3 BY ADV. SRI.A.C.DEVY

**[Respondent No.2 is deleted from the party array at the risk of the appellant as
per order dated 20/08/15 in I.A. No.3027/15 in MACA No.214/09]*

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

M. A. C. A. No.214 of 2009

Dated this the 20th day of August, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant had sustained serious injuries in a motor accident that occurred on 28-12-2001 involving a motorcycle. That motorcycle was owned by the first respondent and insured with the third respondent. The appellant filed a petition before the Motor Accidents Claims Tribunal, Kozhikode, claiming compensation on account of the injuries suffered by her in the accident. The learned Tribunal, after considering the matter, awarded a total compensation of ₹25,500/- under various heads as follows:

Medical bills	- ₹ 5,500/-
Incidental charges	- ₹ 2,000/-
Pain and suffering	- ₹10,000/-
Loss of academic year and amenities	- ₹ 7,000/-

Transportation	-	₹ 1,000/-

		₹ 25,500/-
		=====

The third respondent Insurance Company was directed to deposit the amount awarded. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard.

3. The appellant was a girl aged 19 at the time of accident. She was doing B.F.SC. course at the Fisheries College, Panangad, at that time. She has sustained fracture of the lateral tibial condyle and the tibial spine of her right leg. She has also sustained anterior cruciate ligament tear. She was treated at the Medical College Hospital, Kozhikode, after the accident. She was treated by way of grafting of tibial condyle and repairing of anterior cruciate ligament. POP cast and long leg cast were applied. She has undergone inpatient treatment from 30-12-2001 to 25-01-2002 at that Hospital. Thereafter, she has continued long period of

outpatient treatments. The fracture of the lateral condyle of right tibia was comminuted in nature. The Tribunal did not specifically award any amount towards expenses for bystanders and extra-nourishment, but awarded ₹2,000/- under the head of incidental charges. This we treat as awarded under the heads of expenses for bystanders and extra-nourishment. In view of the nature of the injuries suffered and the long period of treatment, we enhance ₹2,000/- so awarded to ₹8,000/-. ₹10,000/- awarded under the head of pain and suffering is on the lower side. On considering the serious nature of injuries and treatments, we enhance this amount to ₹25,000/-. The Tribunal awarded ₹7,000/- under the head of loss of academic year and loss of amenities. On considering the considerable loss of amenities being suffered as a result of the injuries sustained, we enhance the said amount of ₹7,000/- to ₹20,000/-. ₹1,000/- awarded under the head of transportation is enhanced to ₹2,500/-.

4. The learned counsel for the appellant submitted that

the appellant has some permanent disability as a result of the injuries sustained in the accident. This Court on earlier occasions granted repeated opportunities to the appellant to appear before the Medical Board at the Medical College Hospital, Kozhikode, in order to assess the permanent disability, if any, sustained by her as a result of the injuries sustained in the accident. But, the appellant did not care to avail of such opportunities. As of now, there is absolutely no evidence either oral or documentary to show that she has sustained any permanent disability. Therefore, we are unable to award any amount under the head of permanent disability based on the submission made by the learned counsel appearing for the appellant. Thus, the appellant is entitled to an additional amount of ₹35,500/- (Rupees thirtyfive thousand and five hundred only) over and above the compensation awarded by the Tribunal. The said amount of ₹35,500/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The third respondent Insurance Company is directed to

deposit the amount within thirty days from the date of receipt of a copy of this judgment.

This appeal is allowed in part as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE