IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

MACA.No. 542 of 2014 ()

AGAINST THE AWARD IN OPMV 488/2010 of M.A.C.T OTTAPPALAM DATED 15.11.2013

APPELLANTS: 3RED RESPNDENT IN OP(MV)NO.488/2010

THE NEW INDIA ASSURANCE COMPANY LTD.
JRJ COMPLEX, OTTAPALAM, REPRESENTED BY ITS MANAGER
REGIONAL OFFICE, M.G.ROAD, ERNAKULAM

BY ADV. SRI.LAL GEORGE

RESPONDENTS: CLAIMANT AND RESPONDENT 1 &2 IN OP(MV)NO.488/2010
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1. VIJEESH, AGED 19 YEARS
   S/O.NARAYANANKUTTY, NARAYANATHODI VEEDU, KUMBIDI
   PERUMBALAM, OTTAPALAM TALUK, PALAKKAD DISTRICT 679 553

2. SREEJISH, AGED 21 YEARS
   S/O.VELAYUDHAN, KUNNATH HOUSE, KUMBIDI
   OTTAPALAM TALUK, PALAKKAD DISTRICT 679 553.

3. SURENDRAN.K, AGED 37 YEARS
   S/O.KRISHNAN NAIR, KOLATH VALAPPIL HOUSE, KUMBIDI
   PERUMBALAM, OTTAPALAM TALUK, PALAKKAD DISTRICT 679 553

R1 BY ADV. SRI.T.C.SURESH MENON

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 07-07-2015, ALONG WITH CO. 57/2014, 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.542 of 2014 &
Cross Objection No.57 of 2014
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Dated this the 7th day of July, 2015

JUDGMENT

Ravindran, J.

M.A.C.A.No.542 of 2014 is an appeal filed by the third respondent in O.P.(MV).No.488 of 2010 on the file of the Motor Accidents Claims Tribunal, Ottapalam. The first respondent herein , the claimant before the Motor Accidents Claims Tribunal has filed Cross Objection No.57 of 2014. While the appellant challenges the quantum of compensation awarded by the Motor Accidents Claims Tribunal, the first respondent has filed the memorandum of cross objections seeking enhancement of the compensation awarded by the Tribunal. The brief facts of the case are as follows :-

2. The first respondent herein, the claimant before the Motor Accidents Claims Tribunal instituted O.P.(MV).No.488 of 2010 claiming a total sum of ₹10,00,000/- as compensation for the injuries sustained by him in a motor accident that took place at about 2.30 pm on 11.08.2010. The claimant, a coolie aged 19 years was travelling in an auto rickshaw bearing registration No. KL-09/F-2833 driven by the second respondent herein and owned by the third respondent. The said auto rickshaw overturned and in that accident the claimant sustained serious injuries. The claimant contended that the accident

took place on account of the rash and negligent driving of the auto rickshaw by its driver, the first respondent before the Tribunal.

3. Though the owner and the driver of the auto rickshaw were served, they did not enter appearance and they were therefore set ex parte. The appellant, the insurer of the auto rickshaw filed a written statement admitting insurance coverage. It however contended that the compensation claimed is exorbitant and excessive. It also raised further contention that on the date of that accident, the driver of the auto rickshaw did not possess a valid driving licence and that the vehicle was also not covered by a fitness certificate or permit. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on either side. However, on the side of the claimant, Exts.A1 to A13 were produced and marked. The claimant was also subjected to medical examination by a medical board constituted by Superintendent, District Hospital, Palakkad and the medical certificate issued by the medical board was marked as Ext.X1. The Motor Accidents Claims Tribunal considered the rival contentions and held relying on Ext.A1 F.I.R, Ext.A2 scene mahazar, Ext.A3 charge sheet and Ext.A5 report submitted by the Assistant Motor Vehicle Inspector after inspecting the auto rickshaw that the accident occurred solely on account of the negligent driving of the auto rickshaw by its driver, the first respondent before the Motor Accidents Claims Tribunal .

4. Considering the seriousness of the injuries sustained by the

claimant in the accident and the fact that he had undergone treatment in Amala Hospital for 13 days and later in Elite Mission Hospital for 6 days, the Tribunal awarded the sum of ₹9,000/- as loss of earnings for a period of three months, taking the monthly income of the claimant as ₹3,000/-. The Tribunal also awarded the sum of ₹1,07,600/- towards medical expenses covered by Exhibit A12 series of medical bills, ₹3,800/- towards bystander's expenses for a period of 19 days, ₹5,000/- towards transportation expenses, ₹3,800/- towards extra nourishment, ₹500/- towards damage to clothing and ₹25,000/- towards pain and suffering. Having regard to the disability assessed by the medical board in Ext.X1 disability certificate, the Tribunal awarded the sum of ₹2,59,200/- as compensation for loss of earnings and a like sum for permanent disability, taking the monthly income of the claimant as ₹3000/-. The Tribunal thus awarded the sum of ₹6,73,000/- in all as compensation and directed the appellant insurer to deposit the said amount together with interest at 9% per annum from the date of petition till the date of deposit.

5. The contention of the insurer that the driver of the auto rickshaw did not possess a valid driving licence and that the auto rickshaw was not covered by a fitness certificate and permit was repelled consequent on the driver producing the driving licence and the owner producing the certificate of registration as also a copy of the policy. The insurer has, as stated above, filed this appeal challenging

the quantum of compensation awarded by the Tribunal. The claimant has filed the memorandum of cross objections seeking enhancement of the compensation. The main contention raised in the appeal filed by the insurer is that the Tribunal has awarded the sum of ₹2,59,200/- as compensation for loss of earning capacity and a like sum for permanent disability. It is contended in view of the law laid down by the Apex Court in **Raj Kumar v. Ajay Kumar** (2011(1) KLT 620) and by this court in **National Insurance Company v. Anoop Kumar** (2014(1) KLT 266), the Tribunal erred in awarding compensation under both the heads. The main ground raised in the memorandum of cross objections is that the multiplicand adopted is on the lower side and that having regard to the decision of the Apex Court in **Ramachandrappa** v. **The Manager, Royal Sundaram Aliance Insurance Company Limited** (AIR 2011 SC 2951) and **Syed Sadiq & Others** V. **Divisional Manager, United India Insurance Co. Ltd**. (AIR 2014 SC 1052), the Tribunal ought to have awarded compensation for permanent disability/loss of earning capacity taking the monthly income of the claimant as ₹5,000/-. Relying on the decision of the Apex Court in **Sarla Verma & Others v. Delhi Transport Corporation & Another** (2009) 6 SCC 121, **Reshma Kumari & Others v. Madan Mohan and Another** (2013) 9 SCC 65 and **Rajesh v. Rajbir Singh** 2013 (3) KLT 89 (SC), it is contended that future prospects also should have been taken into account for the purpose of awarding compensation for permanent disability/loss of earning capacity.

6. We heard Sri. Lal George, learned counsel appearing for the appellant/insurer and Sri. T.C. Suresh Menon, learned counsel appearing for the claimant/cross objector. We have also gone through the pleadings and the materials on record. The contention raised by the insurer is that there is duplication in the award of compensation under the head permanent disability/loss of earning capacity. The stand taken by the claimant is that the compensation awarded is on the lower side. The claimant was on the date of the accident aged 19 years. He had in the claim petition stated that as a coolie he was earning a monthly income of ₹5,000/-. The third respondent insurer had in its written statement disputed the age, income and occupation of the claimant and contended that they have to be proved by documentary evidence. It had also raised a further contention that the injuries are only minor and therefore the claimant is not entitled to any compensation. The insurer had further contended that the claimant had not suffered any disability either temporary or permanent. The claimant had in the motor accident sustained fracture of the body of the 5th cervical vertebra. There was also upper brachial plexus injury C5-C6 and a penetrating injury on the right side of the neck. The treatment involved triple nerve transfer immediately after the surgery and another surgery one year later. The Medical Board which

examined the claimant has, in the report stated that the rotation of shoulder is limited, that the movement of the elbow is restricted to 90 degrees and that he has permanent whole body disability of 40%. The insurer does not challenge or canvass the correctness of findings recorded by the Medical Board. We will therefore necessarily have to compute the compensation to be awarded in the instant case having regard to the findings arrived at by the Medical Board.

7. Ext.A13 identity card issued to the claimant by the Election Commission of India discloses that as on the date of the accident he was aged only 19 years. The contention that the claimant was earning his livelihood by working as a coolie is not seriously disputed. In any case, the contention of the insurer is that the claimant will have to prove his occupation and income by documentary evidence. The Apex Court has in **Ramachandrappa** v. **The Manager, Royal Sundaram Aliance Insurance Company Limited** (supra) held that a person working as a coolie cannot be expected to produce documentary evidence to substantiate his plea. The Apex Court also held that having regard to the ground realities one can safely proceed on the basis that the monthly income of a person working as a coolie is ₹4,500/-. The accident in that case took place in the year 2004. The accident in the instant case occurred in the year 2009. Having regard to the ground realities, this court can safely proceed on the basis that the claimant who was able bodied and was aged only 19 years on

11.8.2010 was earning a monthly income of ₹4,500/-. The Apex Court has in **Syed Sadiq & Others** V. **Divisional Manager, United India Insurance Co. Ltd** (supra) held that future prospects can also be reckoned even in the case of personal injury claims. The medical records discloses that though the claimant had suffered only 40% whole body disability, he is incapacitated to work as a coolie. In other words, he had become permanently disabled to do the work of a coolie. Since the claimant was working as a coolie and is an uneducated person, the consequence is that he has become permanently disabled to earn his livelihood.

8. Consequently, applying the principles laid down by the decisions referred to above, we are of the opinion that the claimant is entitled to be awarded compensation for permanent disability taking his monthly income as ₹4,500/-, multiplier as 18 and the percentage of disability as 100%. Computed on that basis, the compensation payable to the claimant for permanent disability will be ₹4,500/- + ₹2250 = ₹6,750X12X18 = 14,58,000/-. The Motor Accidents Claims Tribunal has by the impugned award awarded only the sum of ₹2,59,200X2 = ₹5,18,400/-. Consequently we hold that the appellant claimant is entitled to be awarded an additional sum of ₹9,39,600/- as compensation for permanent disability. The compensation awarded under other heads does not in our opinion merit any enhancement.

For the reasons stated above we hold that there is no merit in M.A.C.A.No.542 of 2014. The appeal fails and it is accordingly dismissed. For the very same reasons we allow Cross Objection No.57 of 2014 and award to the cross objector an additional compensation of ₹9,39,600/- over and above the compensation awarded by the Motor Accidents Claims Tribunal. The insurer of the motor vehicle, viz; the appellant in M.A.C.A.No.542 of 2014 the first respondent in the memorandum of cross objections is directed to deposit the said amount together with interest at the rate of 9% per annum from the date of petition till the date of deposit. Upon such deposit being made, one half of the amount deposited shall be released to the claimant and the balance shall be kept in fixed deposit in a nationalized bank for a period of three years with liberty to the claimant to withdraw the interest accruing on the deposit every quarter. No costs.

P.N.RAVINDRAN
JUDGE

ANU SIVARAMAN
JUDGE

sj/kp/-