IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

MACA.No. 1769 of 2015 ()

AGAINST THE AWARD IN OPMV 1566/2012 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM DATED 23-01-2015

APPELLANT/PETITIONER:

P.V VARGHESE
PERUMBRAKUNNEL, VELLOOR P.O., PAMPADY
KOTTAYAM.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA

RESPONDENTS/RESPONDENTS:
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1. JOSEPH VARGHESE
MACHUKATTU HOUSE, MANGANAM P.O.-686018.

2. JOSEPH JOSEPH KALLIDUKANICKAL
KALLIDUKANICKAL, KANJIRAPALLY P.O.-686507.

3. THE NATIONAL INSURANCE CO.LTD.
KOTTAYAM-686001 REPRESENTED BY MANAGER.

R3 BY SRI.M.A.GEORGE
ADV. SMT.DEEPA GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.1769 OF 2015

DATED THIS THE 16th DAY OF DECEMBER, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The claimant in OP(MV)No.1566/2012 on the file of the Motor Accident Claims Tribunal, Kottayam, is the appellant in this appeal. The aforesaid claim petition was one filed under Section 166 of the Motor Vehicles Act claiming compensation for the injuries sustained by the appellant in a motor accident occurred on 22.9.2012.

2. While the appellant was walking through the road, a motor car bearing registration No.KL-34/4043 driven by the 1st respondent came in the reverse direction, in a rash and negligent manner, and hit him, resulting serious injuries. Claiming a total compensation of ₹5,38,500/- under different heads, the appellant filed claim petition before the Tribunal. For the purpose of court fee, the total claim was limited to ₹3,50,000/-.

3. Before the Tribunal, Exts.A1 to A6 were marked on the side of the appellant. Ext.X1 is the disability certificate dated 7.5.2014. After considering the materials on record, the Tribunal

came to the conclusion that the accident occurred due to the rash and negligent driving of the offending vehicle by the 1st respondent and the 3rd respondent being the insurer of the said vehicle was held liable to pay the amount of compensation to the appellant. Under different heads, the Tribunal awarded a total compensation of Rs.92,500/- and directed the 3rd respondent insurer to pay the said amount together with interest @ 8.5% per annum from 6.12.2012 till realisation, with proportionate costs. Dissatisfied with the amount of compensation awarded under different heads, the appellant is before this Court in this appeal.

4. We heard argument of the learned counsel for the appellant and also the learned counsel appearing for the 3rd respondent insurer.

5. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal under different heads represents a just and reasonable compensation.

6. The pleadings and materials on record would show that at the time of accident the appellant was aged 60 years.

Though the appellant would contend that he is a rubber tapper, earning monthly income of Rs.6,500/- per month, there was absolutely no materials before the Tribunal to arrive at his monthly income at the time of accident. The appellant has also not chosen to enter the box. It was in such circumstances, the Tribunal fixed the notional monthly income as Rs.5,000/- and applying the multiplier of '9' and the percentage of disability at 4% as certified in Ext.X1, awarded a sum of ₹21,600/- towards loss earning capacity. In the absence of any reliable materials, we find that the compensation awarded by the Tribunal under the said head represents a just and reasonable compensation, which warrants no interference in this appeal.

7. The documents on record would show that in the accident, the appellant sustained comminuted intra articular fracture to distal end of radius (left) and underwent inpatient treatment from 22.9.2012 to 25.9.2012. During that period, he was treated with POP slab and later there was application of plate screw and 'K' wire and the implant was removed on 7.11.2012. Towards loss of earning, the Tribunal awarded a sum of

₹15,000/- (5000x3). Considering the nature of injuries sustained by the appellant and also the treatment he had undergone, we deem it appropriate to refix the loss of earning for a period of five months, instead of three months granted by the Tribunal. Thus, the compensation payable towards loss of earning is refixed as Rs.25,000/- (i.e., 5000x5). In the result, the appellant will be entitled for an additional compensation of **₹10,000/-** under this head.

8. Towards pain and suffering, the Tribunal awarded a sum of Rs.25,000/-. Considering the nature of injuries sustained and also the treatment the appellant had undergone, we find it appropriate to enhance the compensation towards pain and suffering as ₹30,000/-. In the result, the appellant will be entitled for an additional compensation of **₹5,000/-** under this head.

9. Towards loss of amenities, the Tribunal awarded a sum of ₹12,000/-. It is not in dispute that at the time of accident, the appellant was aged 60 years and was earning his livelihood by working as a rubber tapper. As evident from Ext.X1, the appellant

sustained disability of 4% as certified by the Medical Board. Considering the facts and circumstances of the case, we deem it appropriate to refix the compensation towards loss of amenities as ₹30,000/- thereby awarding an additional compensation of ₹**18,000/-** under this head.

10. Relying on the judgment of the Apex Court in **Raj Kumar v. Ajay Kumar and another (2011 (1) SCC 343)**, the learned counsel for the appellant would contend that the Tribunal went wrong in not awarding appropriate compensation under the head permanent disability, on the reason that compensation for loss of earning capacity has already been allowed. Paras.6 and 7 of the judgment read thus:

> **"6.** The heads under which compensation is awarded in personal injury cases are the following :
>
> Pecuniary damages (Special Damages)
>
> (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
>
> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured,
> comprising :
>
> (a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.

7. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) - depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) - involves determination of lump

> sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case.”

11. In the case on hand, the Tribunal has awarded ₹15,000/- (5000x3) towards loss of earning for the period of treatment, which has been refixed as ₹25,000/- (5000x5) in this appeal. In addition to this, taking into account the 4% disability as certified in Ext.X1, the Tribunal awarded another sum of ₹21,600/- towards loss of earning capacity, applying the multiplier of '9'. The compensation awarded by the Tribunal under the head 'loss of earning capacity' is the compensation towards 'loss of future earnings on account of permanent disability'. In such circumstances, we find absolutely no merit in the contention raised by the learned counsel for the appellant that the Tribunal has not compensated the appellant for

permanent disability.

In the result, the appellant will be entitled for an additional compensation of **₹33,000/-** in this appeal, together with interest @ 9% per annum from the date of petition till realisation. Since the insurance coverage of the vehicle involved in the accident is admitted by the 3rd respondent insurer, the said respondent shall deposit the additional compensation awarded in this appeal together with interest within one month from the date of receipt of a certified copy of this judgment.

Appeal is disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRAN,
JUDGE

dsn

TRUE COPY

P.S.TO JUDGE