

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 321 of 2009 ()

AGAINST THE AWARD IN OPMV 3426/2001 of M.A.C.T., ERNAKULAM
DATED 22-03-2008

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APPELLANT(S) /PETITIONER:

FAIZAL, AGED 25 YEARS, S/O. KHADER,
VETTUKATTIL HOUSE, KOKKOOR DESOM, ALAKODU VILLAGE,
MALAPPURAM DISTRICT, NOW WORKING UNDER ANTONY, MARKET,
ERNAKULAM.

BY ADV. SRI.P.M.JOSHI

RESPONDENT(S) /RESPONDENTS:

1. SALIM, AGED 44 YEARS, S/O.MUHAMMED KOYA,
PATTARUKADAVIL HOUSE, VADUTHALA DESOM
CHERALNELOOR VILLAGE. (*DELETED)

2. V.P. ABDUL SALIM, KANNACHAMMURAYIL HOUSE,
KOCHI-18. (*DELETED)

3. THE UNITED INDIA INSURANCE CO.LTD
JOSE TRUST BUILDING, CHITTOOR ROAD, COCHIN-35.

(*RESPONDENTS 1 & 2 ARE DELETED FROM THE PARTY ARRAY AR
THE RISK OF THE APPELLANT AS PER ORDER DATED 6.4.2015 IN
I.A.933/2015 IN MACA.321/2009)

R3 BY ADV. SMT.P.K.SANTHAMMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.No.321 of 2009

Dated this the 1st day of September, 2015.

JUDGMENT

Harilal, J.

The appellant is the claim petitioner in O.P(MV) No.3426/2001 on the files of the Motor Accidents Claims Tribunal, Ernakulam. The above claim petition was filed under Section 166 of the Motor Vehicles Act, claiming compensation for the injuries suffered by him in a road traffic accident. According to the appellant, on 5.3.2001 at about 1.15 P.M., while he was riding his bicycle, he was knocked down by the scooter ridden by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent and as a result of that accident, he has sustained grievous injuries. At the time of accident, he was aged 18 years and working as a salesman earning Rs.2,000/- per month. He claimed a total amount of Rs.1,50,000/- as compensation.

2. The respondents 1 and 2 remained ex parte and the 3rd respondent filed a written statement admitting the policy, but denying the liability and challenging the quantum of amount claimed under various heads. Exts.A1 to A6 were marked to substantiate the amount claimed by the appellant. On an appraisal of the aforesaid evidence, the Tribunal passed the impugned award granting a total compensation of Rs.14,000/-.

3. Heard the learned counsel for the appellant as well as the learned counsel for the respondents.

4. The learned counsel for the appellant advanced arguments contending that the Tribunal has failed to consider the severity of the injuries and also the pain and discomforts suffered by the appellant, in its correct perspective. The appellant was working as a salesman and earning Rs.2,000/- per month; but the Tribunal went wrong by granting a total sum of Rs.14,000/- only, without determining the monthly income or separately considering other amounts due under various heads.

5. The accident occurred in the year 2001. The

appellant was aged 18 years at that time. According to him, he was working as a salesman. Absolutely no evidence is added in this regard. Considering the money value and other relevant aspects, Rs.1,500/- is reasonable and we re-fix the same as his monthly income.

6. As rightly submitted by the learned counsel for the appellant, the Tribunal has granted a total compensation only and failed to determine the exact amount which the appellant is entitled to get in accordance with the nature of sufferance and the extent of loss under various heads. The conversion of loss caused by death or bodily injury and resultant damages to compensation payable in terms of money must be based on certain data, criteria and standard of judging, establishing reasonable nexus between the loss or damage incurred by the injured or the dependents of the deceased, as the case may be, and the quantum of amount to be fixed and total compensation has to be determined on that basis. The method of awarding a lump sum amount without adopting the

aforesaid methodology and standard of judging compensation is undesirable and liable to be discouraged. In the above view, we find that the Tribunal has failed to determine the quantum of compensation, in accordance with the methodology and standard of judging well laid down by judicial precedents.

7. Going by Ext.A2 wound certificate, it is seen that he had sustained 'fracture lower end of (R) Radius and tenderness and swelling (R) wrist'. Having regard to the nature of fracture, we are of the opinion that an amount of Rs.10,000/- can be given for pain and suffering and Rs.1,000/- can be given for food, clothing and travelling expenses, etc. It could be reasonably inferred that he was not in a position to work for a period of at least three months and taking that factor into account, we fix a sum of Rs.4,500/- towards the loss of earnings. Certainly, he might have availed of the service of a bystander during the period in which he was laid up. So, in that account, he is entitled to get Rs.1,500/-. As rightly held by the Tribunal, as per

Ext.A6 series of medical bills, evidencing treatment expenses, he is entitled to get Rs.3,360.45/-. Compensation for loss of amenities is fixed as Rs.10,000/-.

8. Thus, the appellant is entitled to get a total compensation of Rs.30,360/-. After giving credit to the amount granted by the Tribunal, he is entitled to get an additional compensation of Rs.16,360/-. Needless to say, the appellant is entitled to get interest @ 9% per annum from the date of filing the petition till realisation for the enhanced compensation only. The 3rd respondent/insurer is directed to deposit the entire compensation within a period of one month from the date of receipt of a copy of the judgment.

The appeal is disposed of accordingly.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.