

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

MACA.No. 1390 of 2011 ()

AGAINST THE AWARD IN OPMV 1411/2009 of M.A.C.T.,
KOZHIKODE, DATED 14-06-2010

APPELLANT/PETITIONER IN OPMV:-

VELAYUDHAN, S/O.PINURNAHU,
KAMALA KUNNUMMAL HOUSE, P.O.KAKKODI, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS IN OPMV:-

1. SAMEER, 11/416, NEROTH HOUSE,
THAMARASSERY
KOZHIKODE-673 015.
(DELETED FROM THE PARTY ARRAY VIDE ORDER
DATED 14.01.2015 IN IA.50/2015)

2. THE NEW INDIA ASSURANCE CO.LTD.,
TRIPURI BUILDING, EAST NADAKKAVU, KOZHIKODE-673 001.

R2 BY ADV. SMT.T.C.SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.1390 of 2011.
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Dated this the 28th day of January, 2015.

J U D G M E N T

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

2. The accident took place on 16.5.2009. It is stated in the application that the claimant is a loading employee. It is also stated that the monthly income of the claimant is Rs.4,500/-. He sustained injuries including dislocation of his left shoulder in the accident. He claimed a sum of Rs.50,000/- by way of compensation in the proceedings.

3. The Tribunal, on an appraisal of the materials, found that the claimant is entitled only to a sum of Rs.15,946/- as compensation. Since the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to pay the

compensation to the claimant.

4. Heard the learned counsel for the appellant/claimant and also the learned counsel for the second respondent/insurer.

5. The case set up in the application for compensation that the claimant is a loading employee is not seen refuted. The Tribunal noticed that the claimant suffered dislocation of his left shoulder in the accident. Ext.A3 is the discharge card issued to the claimant from the Medical College Hospital, Kozhikode. Ext.A3 discharge card also indicates that the claimant was admitted in the Hospital with pain on his left shoulder. The said discharge card also indicates that the claimant was undergoing treatment even after five months of the accident for the injuries sustained by him. It is also seen that in the course of treatment, he had undergone a surgery on 21.5.2009.

6. The Tribunal reckoned the monthly income of the claimant at Rs.2,000/- and granted a sum of Rs.3,000/- by way of compensation towards loss of earnings for a period

of 1½ months. In so far as the claimant is a loading employee and since he has suffered dislocation of his left shoulder, it cannot be disputed that he could not have worked as a loading employee, at least for a period of four months. Likewise, the monthly income of the claimant reckoned by the Tribunal at Rs.2,000/- is also inadequate. According to me, the claimant is entitled to compensation for loss of earnings for a period of four months reckoning the monthly income at Rs.3,000/-. The claimant is, therefore, entitled to a further sum of Rs.9,000/- towards compensation for loss of earnings. For pain and sufferings, the claimant was granted only a sum of Rs.10,000/-. As noticed earlier, the claimant was undergoing treatment at the Medical College Hospital even after five months of the accident and as such, according to me, the claimant is entitled to a further sum of Rs.5,000/- towards compensation for pain and sufferings. Towards loss of amenities and enjoyments in life, it is seen that the Tribunal has granted only a sum of Rs.1,500/- to the claimant. For

the reasons stated by me for enhancing the compensation granted to the claimant for the pain and sufferings, according to me, the claimant is entitled to a further sum of Rs.8,500/- towards compensation on that head.

In the result, the appeal is allowed in part. The compensation granted to the claimant by the Tribunal is modified, granting him a further sum of Rs.22,500/- by way of compensation. Needless to say, the claimant will be 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.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-

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PA TO JUDGE.