

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

MACA.No. 148 of 2010 ()

AGAINST THE AWARD IN OPMV 3178/2001 of M.A.C.T.,KOZHIKODE DATED 03-10-
2009

APPELLANT(S)/CLAIMANT:

ANOO.P. K., S/O CHANDRAN, AGED 36 YEARS
PUNATHIL PARAMBA VEEDU.P.O, EDAKKADU, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S)/RESPONDENTS:

1. PRAVEEN, S/O GANGADHARAN
EDAVALATH PARAMBIL, SOORYA GANGA, P.O.EDAKKADU
KOZHIKODE DISTRICT.

2. THE ORIENTAL INSURANCE CO.LTD,
DIVISIONAL OFFICE, PRAMOD BUILDINGS, CHEROOTTY ROAD
KOZHIKODE DISTRICT.

R1 BY ADV. SRI.T.M.RAMAN KARTHA

R2 BY ADV. SRI.M.JACOB MURICKAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

SHAJI P. CHALY, JJ.

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M.A.C.A. No. 148 of 2010

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Dated, this the 1st day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

Claimant in O.P.(M.V.) No. 3178 of 2001 of the I Additional Motor Accidents Claims Tribunal, Kozhikkode dissatisfied with the award dated 03.10.2009 has preferred this appeal.

2. The facts for disposal of the appeal are as follows :

The appellant was walking along the side of Ganapathikavu - Athanikkal road on 01.10.2000 at about 1.30 p.m. and then a motor cycle bearing No. KL 11 E 2852 came from opposite direction knocked down the appellant and as a result of the said accident, he sustained injuries. The appellant was taken to the Medical College Hospital, Kozhikkode and treated there as inpatient for 15 days. The accident has occurred due to the rash and negligent riding of the motorcycle by the first respondent who is also the insurer, contends the appellant.

3. The second respondent Insurance Company filed a written statement admitting the accident and coverage of the motorcycle

involved in the accident by a valid policy. However, the liability to pay compensation was denied by making the general contention that the accident has not occurred due to any negligence on the part of the 1st respondent and also disputing the age, income, injury etc. etc. of the appellant.

4. The Tribunal after taking into account the documentary evidence produced by the appellant and case sheet obtained from the hospital has awarded a total compensation of Rs.40,750/- on various counts. Dissatisfied with the said amount awarded, this appeal is preferred.

5. The crux of the contention put forward by the learned counsel for the appellant is that the appellant was a plumber aged 28 years and was earning substantially. The Motor Accidents Claims Tribunal has taken his monthly income only as Rs.1500/-. It is also contended that the appellant has suffered fracture of right femur and he has undergone 15 days hospitalization, more over case sheet produced before the Court below reveals 1.5 c.m. shortening of the leg. It is thereupon contended by the learned counsel for the appellant that the amount of Rs.1500/- taken as monthly income is very meagre and therefore same has to be

enhanced. More over, the amount awarded by the Tribunal towards compensation for loss of amenities is Rs.4000/- and in a case where fracture, injury and shortening of leg were suffered by a victim consequent to the accident, more amounts should have been awarded.

6. Thus after appreciating the entire factual situations and evaluating the contentions, put forward by the rival parties, we are of the considered opinion that taking into account the age of the appellant and the possibility of attending to reasonable period of employment during the course of a month, an amount of Rs.3000/- can be taken as monthly income of the appellant. Therefore for a period of six months he is entitled to get Rs.18000/-. Already Rs.12000/- was awarded by the Tribunal. Therefore, a further amount of **Rs.6000/-** is granted to the appellant on that count. We are also of the opinion that the amount awarded for loss of amenities can be enhanced by **Rs.16000/-**, in view of the type and nature of injury suffered by the appellant. Taking into account the permanent disability of shortening of leg, as evident from Ext.X1 case sheet, a lump sum amount of **Rs.10000/-** can also be granted to the appellant. Thus altogether the appellant is entitled

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to get an amount of **Rs.32000/- (Rupees Thirty Two thousand only)** as additional compensation. Appellant is also entitled to get interest @ 9% p.a. from the date of filing the application for the additional compensation.

Therefore appeal is partly allowed by enhancing the compensation awarded by the Tribunal by Rs.32,000/- and accordingly, there will be a direction to the second respondent Insurance Company to pay the said sum with interest @ 9% p.a. within a period of one month from the date of receipt of a copy of this judgment.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**SHAJI P. CHALY,
JUDGE**

kmd

/True copy/

P.A. to Judge