IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

MACA.No. 1969 of 2015 ()

AGAINST THE AWARD IN OPMV 629/2011 of MACT MUVATTUPUZHA DATED 18-02-2015

APPELLANT(S)/PETITIONER:

ASHOKAN @ ASHOK P.A
S/O.AYYAPPAN, RESIDING AT PUNNAPPARAYIL HOUSE
KUDAYATHOOR, KODIKULAM, THODUPUZHA.

BY ADVS.SMT.ANEY PAUL
SRI.PHILIP J.VETTICKATTU

RESPONDENT(S)/RESPONDENTS:

1. YOHANNAN
S/O.MATHAI, KUZHINATTU HOUSE, PALLICKAMALI.P.O.
MANEED, PIRAVOM. 686 664.

2. SHAMNAS
S/O.UMMER, PULLIKKUDIYIL HOUSE, VANNAPPURAM.P.O.
VANNAPPURAM, IDUKKI.685 607.

3. THE BRANCH MANAGER
THE UNITED INDIA INSURANCE CO. LTD.
THODUPUZHA.685 584.

R3 BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A. No. 1969 of 2015

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Dated, this the 2nd day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The appellant is the claimant before the Tribunal, who sustained serious injuries in a road traffic accident occurred on 09.05.2011. The appellant was riding on a motor cycle bearing No. KL6B 5167, when another motor cycle bearing No. KL17 A 256 ridden by the second respondent allegedly in a rash and negligent manner came from the opposite side in excess speed and hit against the appellant's motor cycle causing serious injuries, which was sought to be compensated by filing a petition under Section 166 of the M.V. Act, claiming a sum of Rs. 8 lakhs under various heads. The first respondent, who was the registered owner of the vehicle, sought to dispute the liability stating that he had already sold the vehicle to one Subin in the year 2006. It is stated that the said vehicle was subsequently purchased by the second respondent and that he himself was the rider of the motorcycle at the relevant time. The liability was sought to be avoided by the first respondent with the aforesaid contentions. The second respondent virtually chose to remain ex parte. The third respondent filed a written statement disputing the negligence on the part of the second respondent, however contending that the second respondent was not having any valid driving licence and that the licence produced by the said respondent was a fake one, and hence there was violation of the statutory/policy conditions. It was also pointed out that the motorcycle ridden by the appellant was having no valid insurance coverage and that he was riding the motorcycle in violation of statutory prescription. The first respondent mounted the box and gave evidence as RW1. No oral evidence was adduced either from the part of the appellant/claimant or from the part of the 2nd and 3rd respondents. The documentary evidence adduced from the part of the petitioner before the Tribunal consists of Exts. A1 to A11 and the documents produced from the part of the Insurance Company were Exts. B1 to B3.

2. After analysing the evidence on record, the Tribunal arrived at a finding that the version of the first respondent was liable to be accepted with regard to the ownership and possession of the vehicle concerned. A positive finding was rendered to the effect that the second respondent was the actual owner of the

vehicle, and that the second respondent himself was riding the vehicle at the relevant time and that the accident had occurred because of the negligence on his side. After considering the injuries sustained by the appellant and also the extent of disability certified by the competent authority as 46%, the entire extent of disability was reckoned and compensation was worked out towards the permanent disability, reckoning the monthly income of the claimant as Rs.4000/- and adopting the multiplier '15', to an extent of Rs.3,31,200/-. Various amounts were awarded under other heads as well, thus granting a total compensation of Rs.5,72,686/-. But the Tribunal held that the claimant was entitled to have only 95% of the total compensation, for the absence of valid insurance coverage in respect of the vehicle belonging to the claimant, which was assessed as **Rs.5,44,100/**- and this was directed to be satisfied by the Insurance Company with interest @ 8% p.a. from the date of filing the petition till realization, with liberty to realize the same from the second respondent. This is sought to be challenged by filing present appeal, referring to inadequacy of the compensation awarded, particularly with regard to monthly income reckoned by the Tribunal.

3. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 3rd respondent Insurance Company.

4. The learned counsel for the appellant submits that the appellant was earning much more amount than Rs.6000/- p.m. at the time of accident. The question to be considered, is whether the case put up by the appellant that he was earning an income of Rs.6000/- p.m. is correct or not. So as to have an effective adjudication of the issue, it is worthwhile to make a reference to the amounts claimed under different heads and the amount awarded by the Tribunal, as given in paragraph 16 of the Award, which is extracted below :

Head	**Amount claimed**	**Amount Awarded**
Loss of earnings	50000	24000
Pain and sufferings	50000	40000
Loss of amenities	50000	30000
Bystander expenses	25000	5250
Extra nourishment charges	25000	3500
Transportation charges	1500	2500
Medical treatment charges	200000	136236
Compensation for permanent disability	600000	331200
Total		**572686**

5. As mentioned herein before, in spite of the claim raised by the appellant to the effect that he was working as a 'Mason', absolutely no document was produced either before the Tribunal or before this Court. It is true that documentary evidence may not be available in all cases, especially in the case of general workers or such other casual workers, as made clear by the Apex Court in **Syed Sadiq and Others Vs. Divisional Manager, United India Insurance Co. Ltd [(2014) 2 SCC 735]** holding that proof of income is not mandatory in the case of self employed labour in unorganized sector. But nothing prevented the appellant to mount the box and depose as to the nature of avocation being done by him for eking out his livelihood. Since the appellant did not choose to mount the box, the question is, whether the monthly income reckoned by the Tribunal is correct or sustainable, treating him as a general worker. The appellant was aged 44 years at the time of accident and the Tribunal has reckoned his monthly income as Rs.4000/- even without any evidence, which course cannot be termed as arbitrary or unreasonable in any manner. The multiplier adopted by the Tribunal as '15' is perfectly within the four walls of law and entire disability certified by the Government T.D Medical

College, Alappuzha vide Ext. C1 has been accepted in toto and the compensation for the disability has been worked out accordingly. The Tribunal has also awarded quite reasonable or more amount under various heads, so as to make total compensation payable as Rs.5,72,686/-. However observing that the motor cycle ridden by the claimant/appellant did not have any valid insurance coverage, deduction to an extent of 5% has been made from the total compensation, thus arriving at Rs.5,44,052/- (rounded to Rs.5,44,100/-) to be satisfied with interest @ 8% p.a.

6. After hearing the learned counsel for the appellant and considering the materials on record, we find it difficult to accept the calculation effected by the Tribunal by deducting 5% for the absence of valid insurance coverage for the vehicle belonging to the appellant. In what way the absence of insurance coverage of the vehicle ridden by the appellant contributed to the accident has not been discussed anywhere in the Award. No case is there to the effect that the appellant ridden the vehicle in a rash and negligent manner or that he has crossed the middle line of the road so as to have a collision with the other vehicle. As per the discussions of the Tribunal, the negligence is attributable solely to the owner cum

driver of the vehicle i.e. second respondent and as such the deduction to an extent of 5 % ordered by the Tribunal from the total compensation awarded is not correct or sustainable. We make it clear that full compensation worked out by the Tribunal to an extent **Rs.5,72,686/**- is liable to be paid to the appellant, which will carry interest @ 8% p.a. from the date of filing the petition till realization. If the amount is not deposited by the Insurance Company so far, the same is liable to be deposited in view of the admission as to the coverage under the policy, which shall be done at any rate within one month from the date of receipt of a copy of this judgment. It is made clear that the 3rd respondent will be at liberty to realize the award amount from the 2nd respondent, in accordance with law.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

Sd/-
K. HARILAL,
JUDGE

kmd