

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

MACA.No. 1823 of 2013 ()

AGAINST THE AWARD IN OPMV.NO.569/2010 of M.A.C.T.,
PALAKKAD, DATED 22-01-2013

APPELLANT/PETITIONER:-

KAJAHUSSAIN, AGED 57 YEARS,
S/O.JAILABUDHEEN, 8/453/7,
SHANGUVARATHODE,
KALPATHY, PALAKKAD.

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENTS/RESPONDENTS:-

1. M.UDUMAN,
S/O.MUHAMMED, KOTTILPEEDIKAVEEDU,
DHONI P.O., PALAKKAD,
(OWNER OF VEHICLE KL9-G 3821).

2. MANIKANDAN, S/O.LAKSHMANAN,
AGED 37, MOOLAPADAM VEEDU, PANDIKKAD,
DHONI, PALAKKAD.
(RIDER OF VEHICLE KL9-G 3821)

3. THE NEW INDIA ASSURANCE CO. LTD.,
PALAKKAD.
(INSURER OF VEHICLE KL9-G 3821)

R3 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A.No.1823 of 2013

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Dated this the 7th day of July, 2015.

J U D G M E N T

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted by the Tribunal.

2. The claimant is a coolie. He was aged 54 years at the time of accident. The accident took place on 05.07.2009. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.30,600/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said

award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. Ext.A5 is the wound certificate issued to the claimant. The Tribunal found that the claimant sustained fracture of his right radius in the accident. He was treated as inpatient in the hospital for a day. Ext.A10 medical certificate issued by one Dr.Manoj Kentingal, an Orthopedic Surgeon attached to Welcare Hospital, Palakkad would reveal that the claimant had undergone closed reduction; which is a surgical procedure. Ext.A11 is the disability certificate issued by Dr.Y.N.Koya. Dr.Y.N.Koya was examined as Pw2. Pw2 has assessed the disability of the claimant at 6%.

5. The Tribunal granted only a sum of Rs.6,000/- to the claimant towards loss of earnings. Since the accident took place in the year 2009. As noticed that the claimant was a coolie, it is beyond dispute that the claimant

sustained fracture on his right radius, the claimant is entitled at least for a period of three months towards compensation for loss of earnings. In the aforesaid circumstance, the Tribunal ought to have granted compensation for loss of earnings at the rate of Rs.5,000/- per month for a period of three months. As such, the claimant is entitled to a sum of Rs.9,000/- towards compensation on that head. Towards extra nourishment, only a sum of Rs.1,000/- is seen granted by the Tribunal. On an evaluation of the materials on record, I am of the view that the claimant is entitled to a sum of Rs.15,000/- more on that head. Towards pain and sufferings, despite the injury referred to above, the Tribunal granted only a sum of Rs.10,000/-. According to me, in the nature of the injuries sustained by the claimant, the Tribunal should have awarded a minimum of Rs.15,000/- for pain and sufferings. The claimant is entitled to a sum of Rs.5,000/- on that head. Towards continuing permanent disability no compensation is seen awarded by the Tribunal. It appears

that no compensation was awarded, for the reason that the claimant has not produced any disability certificate. Evidently, Ext.A11 produced by the claimant. True, the claimant should have produced disability certificate issued by a competent authority. Merely for the reason that the claimant is unable to produce a disability certificate issued by a competent authority, he should not have been denied compensation for continuing permanent disability. Admittedly, the claimant is a coolie. It is beyond dispute that he sustained fracture on his right radius. It is beyond dispute that the injury sustained by the claimant would affect his earning capacity. In the circumstance, I am of the view that the claimant should have been granted compensation reckoning his disability at 5%. The claimant is therefore entitled to compensation reckoning his monthly income of Rs.5,000/- and disability of 5%, applying the multiplier of 11, $5000 \times 12 \times 11 \times 5 / 100 = 33,000/-$. Thus, the claimant is entitled to an additional compensation of

Rs.48,500/-.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.48,500/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum.

**P.B.SURESH KUMAR,
(JUDGE)**

Kvs/-