

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No.1859 of 2013

AGAINST THE AWARD IN OP(MV)1453/2010 of M.A.C.T.,ERNAKULAM
DATED 19-06-2013

APPELLANT/PETITIONER :

JIS GEORGE, AGED 19 YEARS,
S/O.N.J.GEORGE, NEDUMPARAMBIL HOUSE, NETTOOR,
MARADU P.O., KANAYANNOOR TALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.A.L.GEORGE

RESPONDENTS :

1. SHYJU,
S/O RAGHAVAN, CHITTILAKKADU HOUSE,
NEAR SREE NARAYANA MANDIRAM, KODAMTHURUTH KARA,
KODAMTHURUTH VILLAGE, ALAPPUZHA-688 001.

2. THE NEW INDIA ASSURANCE COMPANY LTD.,
M.C.ROAD, ANGAMALY-683 572.

R2 BY SC- SMT.P.K.SANTHAMMA
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.1859 of 2013

Dated this the 06th day of February, 2015

JUDGMENT

Anil K.Narendran, J.

The appellant is the claimant in O.P.(M.V.)No.1453 of 2010 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The appellant filed the said original petition before the tribunal under Section 166 of the Motor Vehicles Act, 1988 claiming a total sum of ₹3,00,000/- towards compensation for the injuries sustained by her in a motor accident which occurred on 18.6.2010. On the date of accident, while the appellant was standing in Kannadikadu bus stop near Vyttila bypass, a Maruthi car bearing registration No.KL-07/Y-6849 driven by the first respondent came in a rash and negligent manner and hit her, as a result of which she sustained serious injuries. The tribunal by award dated 19.6.2013 limited the compensation to ₹19,440/- together with interest @ 8% per annum from the date of petition till realisation with proportionate costs. The first respondent being the owner and driver of the car involved in the accident and the second respondent being its insurer were held jointly and severally liable to pay the said compensation to the appellant. Now the appellant is before us in this appeal, seeking enhancement of the compensation already awarded by the tribunal.

2. We heard the arguments of the learned counsel for the appellant-claimant and also the learned standing counsel for the second respondent-insurer.

3. Going by the averments in the claim petition, on 18.6.2010 at 5 p.m., while the appellant was standing in Kannadikadu bus stop near Vytilla Bypass a Maruthi car bearing registration No.KL-07/Y 6849 driven by the first respondent came in a rash and negligent manner and hit the appellant, as a result of which she sustained severe injuries. Immediately after the accident the appellant was taken to Lakeshore Hospital, Nettoor, and thereafter, to the Medical Trust Hospital, Ernakulam, and treated there. At the time of accident the appellant was a student, aged 16 years. The first respondent is the owner-cum-driver of the Maruthi car involved in the accident and the second respondent is its insurer.

4. Before the tribunal, the first respondent remained exparte. The second respondent-insurer filed a written statement contending that there was no negligence on the part of the driver of the car involved in the accident and that the accident occurred due to the negligence on the part of the appellant in crossing the road carelessly. They also contended that the insurance of the vehicle stands in the name of one Benny and the car was later transferred in the name of the first respondent.

5. Based on the documents on record, the tribunal came to the conclusion that the accident had occurred not due to any negligence on the part of the appellant-claimant and repelled the contention raised by the second respondent-insurer in this regard. Though the appellant claimed a total compensation of ₹3,00,000/- under different heads, the tribunal awarded only ₹19,440/- together with interest at the rate of 8% per annum from the date of petition till realisation, with proportionate costs. The 1st and 2nd respondent were jointly and severally held liable to pay the compensation amount.

6. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the tribunal is just and proper or does it call for enhancement.

7. On 18.6.2010 the appellant sustained injuries in a motor accident. Immediately after the accident she was taken to Lakeshore Hospital, Nettoor and thereafter to Medical Trust Hospital, Ernakulam and discharged on 22.6.2010. But in Ext.A9 discharge summary issued from the Medical Trust Hospital, Ernakulam, the date of discharge is shown as 20.6.2010. The appellant has also produced Ext.A10 discharge summary which shows that she was again admitted in the Medical Trust Hospital, Ernakulam on 31.7.2010 and discharged on the very same day, as follow up case of right shoulder closed comminuted fracture with K wire in situ.

Ext.A9 shows that the appellant was given the treatment such as closed reduction and pinning was done on 20.6.2010. She was directed to come for a review after one week. The appellant filed a petition before the tribunal for assessing her disability by the medical board. Pursuant to the order passed by the tribunal, the medical board assessed 3% disability and a certificate to that effect is marked as Ext.C1.

8. Towards medical expenses the appellant claimed a sum of ₹79,552.35. But the tribunal awarded only a sum of ₹38,412/- towards the amount covered by Ext.A12(a) series bills issued from the Medical Trust Hospital, Ernakulam, on the ground that certain bills are advance bills, which cannot be reckoned while fixing compensation towards medical expenses. But on a perusal of those bills, we notice that the advance bills for ₹3,000/- dated 19.6.2010 and for ₹10,000/- dated 20.6.2010 have already been adjusted against bill dated 22.6.2010 for ₹30,700.92 and the hospital had collected only ₹17,700.92 from the appellant. Therefore, the tribunal was not justified in deducting the said amount of ₹13,000/- from the compensation payable to the appellant under the head medical expenses. In such circumstances, the appellant will be entitled for an additional compensation of ₹13,000/- towards medical expenses.

9. Towards attendant expenses the appellant claimed a sum of ₹4,000/- and the tribunal limited the same to ₹1,000/-. Considering the

nature of the injuries sustained by the appellant and also the treatment she had undergone, as borne out from the documents on record, we find it just and proper to award the appellant an additional compensation of ₹2,500/- under this head.

10. Towards compensation for pain and suffering the appellant claimed a sum of ₹40,000/- but the tribunal awarded only a sum of ₹15,000/-. Under this head as well, considering the nature of the injuries sustained by the appellant and also the treatment she had undergone, she will be entitled for an additional compensation of ₹5,000/-.

11. Towards compensation for loss of amenities and enjoyment of life the appellant claimed a sum of ₹40,000/-, but the tribunal awarded only a sum of ₹1,000/- under this head. Considering the nature of the injuries sustained in the accident and the disability suffered, as borne out from Ext.C1 certificate issued by the Medical Board, we find it just and proper to award the appellant an additional sum of ₹5,000/- towards compensation for loss of amenities.

12. In the absence of any reliable materials we find that the amount awarded by the tribunal under the heads loss of earning, transportation to hospital, extra-nourishment, damage to clothes and articles and compensation for disability are just and proper and do not call for any enhancement. Similarly for the very same reason we find that

the tribunal rightly rejected the claim made by the appellant under the heads partial loss of earning and compensation for loss of earning power.

13. Thus, in all the appellant/claimant is entitled for an additional compensation of ₹25,500/-, which would be in addition to what has been awarded by the tribunal.

14. The Tribunal has in the impugned award granted the appellant/claimant interest at the rate of 8% per annum for the compensation amount, from the date of petition till realisation. Relying on the decision of the Apex Court in **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9)**, which was referred to by the Apex Court in a later decision in **Supe Dei v. National Insurance Co.Ltd. (2009 (4) SCC 513)**, the learned counsel for the appellant contended that, the Tribunal ought to have granted interest at the rate of 9% per annum for the compensation awarded.

15. In Kaushnuma Begum's case (supra), taking note of the fact that the nationalised banks are granting interest at the rate of 9% per annum on fixed deposits for one year, the Apex Court directed that the compensation amount refixed shall bear interest at the rate of 9% per annum from the date of the claim. In Supe Dei's case (supra), after referring to the earlier decision in Kaushnuma Begum's case (supra), the Apex Court awarded 9% interest to the claimant in that case. In view of

the above decisions of the Apex Court, we find it just and proper to award the appellant/claimant interest for the additional compensation of ₹25,500/- granted in this appeal, at the rate of 9% per annum from the date of petition till realisation. The appellant shall also be entitled for 9% interest per annum on the sum of ₹19,440/- originally awarded by the tribunal from the date of petition till the date on which the insurer deposited the said amount before the tribunal. Respondents 1 and 2 are jointly and severally held liable to pay the said amount together with interest to the appellant/claimant. The second respondent being the insurer of the vehicle involved in the accident is directed deposit amount payable under this judgment before the Motor Accidents Claims Tribunal, Ernakulam, within a period of two months from today for disbursement to the appellant/claimant.

In the result, this appeal is allowed, modifying the award passed by the Tribunal in O.P.(M.V.)No.1453 of 2010, to the extent indicated above.

No order as to costs.

P.N.RAVINDRAN, JUDGE

ANIL K.NARENDRA, JUDGE

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