

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

MACA.No. 224 of 2010 ( )

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AGAINST THE AWARD IN OPMV 327/2005 of MACT,KALPETTA  
DATED 16-09-2009

APPELLANT(S) /PETITIONER:

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SHYJU.O.M, AGED 26 YEARS,  
S/O.M.J.OUSEPH, MADHURALAYAM, KAPPAMKOLLY,  
POST MEPPADI.

BY ADV. SMT.M.R.JAYALATHA

RESPONDENT(S) /RESPONDENT NO.3:

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NATIONAL INSURANCE CO.LTD.,  
BRANCH MANAGER, KALPENA SHOPPING COMPLEX, MAIN ROAD,  
KALPETTA.

BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

OKB

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

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M.A.C.A.No.224 of 2010  
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Dated this the 5<sup>th</sup> day of October, 2015.

JUDGMENT

Ramachandra Menon, J.

The motorcycle ridden by the appellant herein collided with another motorcycle bearing Regn. No.KL-12/B-6207 ridden by the 1<sup>st</sup> respondent, owned by the 2<sup>nd</sup> respondent and insured by the 3<sup>rd</sup> respondent, causing injuries which were sought to be compensated by filing claim petition before the Tribunal.

2. The case projected by the appellant was that the accident was only because of the negligence on the part of the rider of the other motorcycle. It was stated that the appellant/claimant was working as a house keeper in the establishment by name 'Holiday Inn-Gem Park' at Ooty and that he was earning a monthly income of Rs.3,500/-. Though various amounts were claimed under different heads, it was stated as

limited to Rs.1 lakh as given in the synopsis of the appeal. The evidence adduced before the Tribunal consists of the deposition given by the appellant/claimant as P.W.1 and the documents produced as Exts.A1 to A11. No evidence, either oral or documentary, was adduced from the part of the respondent. The owner and rider of the motorcycle did not contest the matter and were set ex parte. After analysing the evidence on record, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the rider of the motorcycle bearing No.KL-12/B-6207, which came and hit against the motorcycle ridden by the claimant.

3. With regard to fixation of quantum, the Tribunal observed that no piece of evidence was adduced to show the employment or income. In spite of the lack of evidence as against the projected income of Rs.3,500/- per month, the Tribunal fixed the notional income as Rs.3,000/- and awarded compensation under various heads, as given below:-

|                               |   |            |
|-------------------------------|---|------------|
| Loss of earnings for 2 months | : | Rs.6,000/- |
|-------------------------------|---|------------|

|                                    |   |             |
|------------------------------------|---|-------------|
| Transport to hospital              | : | Rs.1,500/-  |
| Extra nourishment                  | : | Rs.500/-    |
| Damage to clothing & articles      | : | Rs.500/-    |
| Bystander's expenses               | : | Rs.5,500/-  |
| Loss of amenities                  | : | Rs.5,000/-  |
| Compensation for pain & suffering: |   | Rs.15,000/- |
|                                    |   | -----       |
| Total                              | : | Rs.34,000/- |
|                                    |   | =====       |

The total compensation of Rs.34,000/- awarded by the Tribunal was ordered to be satisfied with interest @ 7.5% per annum, inadequacy of which is sought to be intercepted by filing this appeal.

4. Heard the learned counsel for the appellant as well as the learned Standing Counsel appearing on behalf of the Insurance Company at length.

5. The injuries sustained by the appellant as found by the Tribunal in paragraph-9 are in the following terms:

“Ext.A3 Wound Certificate shows that the petitioner had sustained contused lacerated wound over scalp, vertex (R) side, contused lacerated wound (L) ring finger, contusion left side neck, acute haematoma right frontal parietal region and mid shaft. Ext.A7 is the

clinical Biochemistry investigation request form. Ext.A8 series are C.T. Scan reports which show that the petitioner had fracture squamous temporal bone on right side, acute extra radural haematoma (R) frontal parietal region, Linear non-depressed fracture (R) squamous temporal region.”

6. Admittedly, no disability is stated as resulted and no such certificate was ever produced before the Tribunal. However, considering the nature and extent of injuries sustained, we find that the loss of earning worked out by the Tribunal by confining the same to two months is inadequate and we find that compensation is liable to be paid for two more months and we award a sum of Rs.6,000/- under this head. The loss of amenities is quantified to an extent of Rs.5,000/-, which is on the lower side, and we enhance it by a further sum of Rs.10,000/-. Even though no certificate has been produced as to the disability of any nature, considering the totality of the factual circumstances, we award a further sum of Rs.10,000/- under this head. Thus, the total balance compensation comes to Rs.26,000/- more, which shall be satisfied

with interest @ 9% per annum from the date of filing the claim petition till satisfaction. Since the policy is admitted, the Insurance Company is directed to deposit the amount within one month from the date of receipt of a copy of this judgment.

The appeal is disposed of accordingly.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.