

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No.1629 of 2011

**(AGAINST THE AWARD DATED 01-02-2011 IN OP(MV) NO.2250/2006 OF THE
MOTOR ACCIDENTS CLAIMS TRIBUNAL,ERNAKULAM).**

APPELLANT/PETITIONER

**VRINDAKUMAR D. NAIR,S/O.DIVAKARAN NAIR,
VRINDAVANAM,VALAMANGALAM,NORTH P.O,
THURAVOOR VILLAGE,CHERTHALA TALUK,
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.G.ARUN GOPAN**

RESPONDENTS/RESPONDENTS:

- 1. K.V.SATHEESHAN,S/O.VAS,6/311,
LAKSHMI NIVAS,THOPPINAKAM,
ANAVATHIL,KOCHI-682 002.**
- 2. JAYAPRAKASAN P.R,S/O.K.A.RAGHAVAN,
KOCHUKULATHINKAL HOUSE,
NEAR VETHALAM TEMPLE,
PALLURUTHY,KOCHI-682 006.**
- 3. UNITED INDIA INSURANCE COMPANY LIMITED,
VETTUKATTIL BUILDINGS,M.G.ROAD,KOCHI-682 016.**

**R1 BY ADV. SRI.P.N.SASIDHARAN
R3 BY ADV.SMT.P.K.SANTHAMMA
BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

M.A.C.A. No.1629 of 2011

Dated 9th February, 2015.

J U D G M E N T

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

2. The claimant is a driver. The accident took place on 8.8.2006. The claimant was aged 39 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the original petition by way of compensation for the injuries sustained by the claimant. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.80,683/- by way of compensation and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy issued by the third respondent at the time of accident, the third respondent was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the appellant/claimant and the learned counsel for the third respondent/insurer.

4. Ext.A9 is the wound certificate of the claimant. The claimant sustained fracture of right lateral malleolus. Ext.A10 is the discharge certificate issued to the claimant from the hospital where he was admitted and treated. He was hospitalised for six days. Ext.A14 is the medical certificate issued to the claimant which recites that the claimant underwent an open reduction and internal fixation for his fracture lateral malleolus on 8.8.2006. It is also recited in Ext.A14 that he may require the implants to be removed in future if he develops any symptoms from the implants being there. It is further recited that the cost of removal, if required, would come approximately to Rs.25,000/-.

5. A sum of Rs.24,000/- was claimed by way of compensation by the claimant towards loss of earnings. The Tribunal has reckoned the monthly income of the claimant at Rs.3,500/- and granted a sum of Rs.7,000/- towards loss of

earnings for a period of two months. In so far as the accident took place in the year 2006, according to me, the monthly income of the claimant for the purpose of computing the compensation for loss of earnings should have been taken at Rs.4,500/-. Further, in the nature of injuries sustained by the claimant, it is certain that he may not be able to work as driver for a minimum period of three months. If the compensation for loss of earnings is computed for a period of three months, reckoning the monthly income at Rs.4,500/-, the claimant is entitled to a further sum of Rs.6,500/- towards compensation on that head. Towards extra-nourishment, only a sum of Rs.1,000/- is seen granted by the Tribunal. According to me, the claimant is entitled to a further sum of Rs.2,000/- towards compensation for extra-nourishment. The claimant is not seen granted any compensation for continuing disability. He is also not seen granted any compensation for loss of earning power. In the circumstances, according to me, he has to be adequately compensated for loss of amenities and enjoyments in life. The Tribunal has granted only a sum of Rs.6,000/- on this head.

According to me, in the nature of the injuries sustained by the claimant, he being a driver by profession, he is entitled to a further sum of Rs.10,000/- towards loss of amenities and enjoyments in life. Thus, the claimant is entitled to a further sum of Rs.18,500/- towards additional compensation.

6. In the result, the appeal is allowed in part. The compensation granted by the Tribunal to the claimant is modified, granting a sum of Rs.18,500/- more by way of compensation. Needless to say, the claimant will be entitled to interest also at the same rate at which the interest was awarded by the Tribunal for the compensation granted.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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