

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

MACA.No. 1676 of 2011

AGAINST THE AWARD IN OPMV 1416/2005 of ADDITIONAL MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA. DATED 18-02-2011.

APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.,
METRO PALACE, GROUND FLOOR, OPP.NORTH RAILWAY
STATION, ERNAKULAM, REPRESENTED BY ITS DULY
AUTHORIZED OFFICER.

BY ADV. SRI.VPK.PANICKER

RESPONDENTS/RESPONDENTS 1 & 2 & PETITIONER:

1. VIJAYAKUMARI,
W/O.CHANDRAN, KIZHAKKE MADOM, THANEERMUKKOM PO,
CHERTHALA TALUK 688 527.

2. MOHANAN P.P, S/O.PARAMESWARA KURUP,
THULASANAMKATTUVELI, MARARIKULAM NORTH PO,
CHERTHALA 688 549.

3. V.SURENDRAN, S/O.VASU, KUNNEL HOUSE,
MAYITHARA PO, CHERTHALA TALUK 688 539.

R3 BY ADV. SRI.A.T.ANILKUMAR

BY ADV. SMT.V.SHYLAJA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 25-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A. No.1676 of 2011-F

Dated this the 25th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The insurer of the vehicle bearing Registration No.KL-17/B-62097 is before this Court challenging the quantum of compensation awarded by the Tribunal in respect of the injuries sustained by the 3rd respondent herein in a road traffic accident occurred on 26/2/2005.

2. The 3rd respondent was a general worker who was engaged in connection with the tarring of the road and was doing some work in watering the wheel of a road roller bearing Registration No. KL-17/B-62097 as part of his engagement. By about 2.30 p.m., he was crushed against a compound wall by the aforesaid

vehicle, as a result of which serious injuries were caused to him, which was sought to be compensated by filing the claim petition before the Tribunal.

3. The 1st respondent, who was the owner of the vehicle, was set ex parte. The road roller was being driven by the 2nd respondent and the same was validly covered by a policy issued by the appellant.

4. The evidence adduced before the Tribunal consists of Exts.A1 to A15 and Ext.X1 (disability certificate). The claimant was examined as P.W.1. No evidence, either oral or documentary, was produced from the part of the respondents. After hearing both the sides, the Tribunal arrived at a finding that the accident was only because of the rash and negligent driving of the road roller by the 2nd respondent and fixed the liability accordingly.

5. After considering the claim of the 3rd respondent herein, who was the claimant, the Tribunal awarded compensation under various heads reckoning

the monthly income of the 3rd respondent/claimant as ₹8,000/-. The disability of 5% certified as per Ext.X1 disability certificate issued by the Medical Board was accepted and a multiplier of '13' was adopted. The amounts awarded by the Tribunal, granting a total compensation of ₹1,71,336/- with interest at the rate of 6% per annum, mulcting the liability upon the Insurance Company is sought to be challenged by filing this appeal.

6. The main ground of challenge raised by the Insurance Company is that the Tribunal went wrong in adopting ₹8,000/- per month as the income of the claimant. Similarly, the multiplier adopted by the Tribunal as '15' is not at all correct and the same ought to have been only '13' as per the 2nd Schedule and as per the law declared by the Apex Court in the decision reported in *Sarla Verma v. Delhi Transport Corporation* [2010 (2) KLT 802 (SC)].

7. When the matter came up for consideration

before this Court earlier, a submission was made from the part of the claimant that the claimant was actually suffering from much higher extent of disability and accordingly, I.A. No.2098/15 was filed to cause the State Medical Board to examine the claimant and to issue a disability certificate accordingly. After hearing both the sides, the said I.A. was allowed as per order dated 23/6/2015; whereby the Superintendent of the Medical College Hospital, Alappuzha, was directed to constitute a proper Medical Board also consisting of a Neuro Surgeon and an Orthopaedic Surgeon, apart from such other specialists as the Superintendent might deem fit to nominate. A report was called for accordingly. Pursuant to the said order, it is seen that the claimant was subjected to a detailed examination by the Medical Board constituted by the Superintendent of the Medical College Hospital, Alappuzha, as aforesaid, and a report dated 20/8/2015 has been submitted before this Court certifying the

actual permanent partial disability as '25%'. The injuries noted by the Tribunal and extracted by this Court as per the interim order dated 23/6/2015 are as given below:

- “1. Type 1 compound fracture humerus shaft bone left upper arm.
2. Fracture clavicle left.
3. Contusion with abrasions left arm.
4. Contusion chest.
5. Crushed injury left upper arm.”

8. The learned counsel for the appellant submits that even the certified disability, as assessed by the Medical Board earlier vide Ext.X1, was as per the 'Mac Brides' scale'; which, however, is seen not followed by the said Medical Board, as evident from their report dated 20/8/2015. It is seen from the said certificate that they have assessed the disability under some new assessment table, particulars of which are not discernible. The leaned counsel submits that the actual facts and figures can be brought to light only by

eliciting necessary details from the concerned Doctor, who was member of the Medical Board.

9. After hearing both the sides, this Court finds that an opportunity is to be given to both the sides to adduce evidence and to bring out the relevant facts and evidence on record. The parties are also set at liberty to substantiate the actual monthly income of the claimant and the appropriate multiplier. Accordingly, the award passed by the Additional Motor Accidents Claims Tribunal, Alappuzha, is set aside. The matter is remitted back to the Tribunal for fresh consideration, except on the question of negligence. The parties are free to adduce evidence as to the facts and figures in this regard. They shall appear before the Tribunal on '19/10/2015'. Since the accident was of the year 2005, the Tribunal shall finalise the proceedings at the earliest, at any rate, within four months. The statutory deposit effected by the appellant/Insurance Company for filing this appeal

shall be given credit to when the matter is finalised by the Tribunal.

This appeal is disposed of accordingly.

The Registry is directed to transmit the L.C.R. back to the Tribunal, along with the original of the Medical Certificate dated 20/8/2015 forwarded by the Medical Board of the Government T.D. Medical College Hospital, Alappuzha, after keeping a copy to form part of the records.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge