

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

MACA.No. 2261 of 2015 ()

AGAINST THE AWARD IN OPMV 1765/2012 of M.A.C.T., KOZHIKODE DATED 09-03-2015

APPELLANT(S) / PETITIONER :

ABIDA, AGED 30 YEARS
W/O. NAJUMUDHEEN, RESIDING AT KOLAPPATTA HOUSE
KANNAMPARAMBATH P.O., FAROKE COLLEGE, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S) / RESPONDENTS:

1. CHELLAPPAN
S/O. MARAPPAN, AGE NOT KNOWN, RESIDING AT 92
SALEM ROAD, NAMAKKAL, TAMIL NADU-637 001.

2. KATHIRAVAN V., AGED 46 YEARS
S/O. VARADARAJ, RESIDING AT KAUNDAMPETTY, VALUVANCHI VIA
KOVILPETTY P.O, MUNDAPPARAL TALUK, THRISINAPPALLY
TAMILNADU-637 001.

3. UNITED INDIA INSURANCE CO. LTD.
DIVISIONAL OFFICE NO.2, DR.SHANKARAN ROAD
NAMAKKAL-637 001.

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 2261 of 2015

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Dated, this the 13th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the injuries caused to the appellant in a road traffic accident occurred on 20.08.2011 is sought to be challenged by filing this appeal by the claimants.

2. The appellant herein was proceeding as a pillion rider on the motorcycle ridden by her husband. While so, it hit against the lorry bearing No. **TN 28 AH 8421** owned, driven and insured by the first, second and third respondents respectively, which was lying parked on the side of the road, leading to serious injuries. This led to claim petition preferred under Section 163A of the M.V. Act before the Tribunal.

3. The claim of the appellant was that she was working as a clerk-typist in a private firm and was having a monthly income of

Rs.3300/- . The extent of disability was certified as 50% by the Medical Board, as borne by Ext. C1. Considering the age and such other relevant factors, reckoning the monthly income of Rs.3000/- and adopting the multiplier '17' based on the law declared by the Apex Court in **Sarla Varma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, the compensation for disability was worked out at Rs.3,06,000/-. The Tribunal has awarded a sum of Rs.5000/- under the head pain and sufferings; Rs. 18000/- towards the loss of income and Rs.15000/- under the head treatment expenses, thus coming to a total of Rs.3,44,000/- which was directed to be satisfied with interest @ 9% p.a.

4. Heard the learned counsel for the appellant as well as the learned standing counsel for the insurance company.

5. The learned counsel for the appellant submits that the Tribunal ought to have been reckoned the monthly income of Rs.3300/- based on the case put up by the appellant. So also the entire medical expenses to the tune of Rs.44,967/- ought to have been awarded by the Tribunal and there is no point in having the amount restricted to the extent as mentioned by the Tribunal, submits the learned counsel.

6. The learned counsel for the Insurance Company submits that, admittedly the husband of the petitioner was charge sheeted by the Police. After a detailed investigation, it was found that the motorcycle ridden by the appellant dashed against the lorry which was parked, adding that no negligence was there on the part of the driver or owner of the lorry. This being the position, the finding of the Tribunal against the owner and insurer of the lorry is liable to be intercepted.

7. The question to be considered in this appeal is whether the quantum of compensation awarded by the Tribunal is required to be enhanced, as the present challenge involved in only with regard to the fixation of the quantum. As such, the scrutiny which is being done by this Court is confined to the said aspect.

8. Admittedly, the appellant/claimant did not choose to mount the box to substantiate the factual particulars as to her income and employment. In the circumstances, the Tribunal has reckoned Rs.3000/- as against the claim of Rs.3,300/-, i.e. almost the maximum limit of Rs.40,000/- per year, as per the schedule to the Act. Eventhough the medical bills for an amount of Rs.44,967/- have been produced, the maximum amount payable,

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: 4 :

in a claim petition preferred under Section 163A, as per the 2nd schedule of the MV. Act is only Rs. 15,000/-, which in fact has been awarded. Similar is the position with regard to the compensation payable under the head of pain and sufferings, loss of income and other relevant heads. In the said circumstances, this Court does not find it as fit case, where the enhancement of compensation is possible. Interference is declined and the appeal is dismissed.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge