

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR**

**THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937**

**MACA.No. 2123 of 2013 ()**

**OPMV.87/2008 OF ADDL. MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA.**

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**APPELLANT/PETITIONER:**

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**SALIMKUMAR @ SALIKUMAR,  
MEENAPPALLI LEKSHAM VEEDU COLONY,  
PURAKKADU MURI, ALAPPUZHA.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL),  
SRI.A.R.DILEEP,  
SRI.MANU SEBASTIAN,  
SRI.K.J.SHARATH KUMAR.**

**RESPONDENTS/RESPONDENTS:**

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**1. VENU, MEENAPPALLI VEEDU,  
PURAKKAD P.O, PURAKKAD-690 551.**

**2. THE NATIONAL INSURANCE CO. LTD.,  
REPRESENTED BY ITS BRANCH MANAGER,  
BRANCH OFFICE, ALAPPUZHA-688 001.**

**R2 BY ADV. SRI.AGI JOSEPH.  
BY ADV. SRI.M.A.GEORGE.**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**rs.**

**P.B.SURESH KUMAR, J.**

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**M.A.C.A.No. 2123 of 2013**  
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**Dated this the 30<sup>th</sup> day of July, 2015**

**JUDGMENT**

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

2. The claimant is a painter. He was aged 36 years at the time of the accident. The accident took place on 15.10.2007. A sum of Rs.90,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.54,650/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy, the insurer of the vehicle was directed to satisfy the

award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. The claimant sustained various injuries in the accident including fracture of right ulna. He also suffered extensive soft tissue loss from his right forearm in the accident. The Tribunal found that the claimant had undergone inpatient treatment in the hospital for seven days and that he had undergone a surgical procedure in the course of treatment.

5. Coming to the quantum of compensation, it is seen that the Tribunal had reckoned the monthly income of the claimant only at Rs.3,000/- while granting compensation towards loss of earnings. Since the accident took place in the year 2008, in the light of the decision of the Apex Court in **Sanjay Kumar V. Ashok Kumar and another** [2014 ACJ 653], I am of the view that the monthly income of the claimant should have been reckoned by the Tribunal at least at Rs.4,500/-. The claimant is, therefore, entitled to a

further sum of Rs.6,000/- towards loss of earnings. The claimant had produced a disability certificate issued by a Doctor certifying his permanent disability at 13%. Ext.A8 is the said disability certificate. The Tribunal found that since the Doctor who issued Ext.A8 disability certificate was not examined, the disability certified by him cannot be accepted as such. However, having regard to the nature of injuries sustained by the claimant, the Tribunal found that the disability of the claimant can be reckoned at 8%. Though the disability of the claimant was reckoned at 8%, the Tribunal did not grant any compensation to the claimant for loss of earning capacity on the ground that in the absence of any proof as to the occupation and the income of the claimant, he is not entitled to compensation for loss of earning capacity. However, the Tribunal granted a sum of Rs.12,000/- towards continuing permanent disability. The Apex Court in **Sanjay Kumar V. Ashok Kumar and another** (supra ) held that in the absence of any evidence as to the income, the income of the claimants in the proceedings

before the Tribunal shall be reckoned at Rs.4,500/-. The said judgment was rendered in the context of an accident took place in the year 2004. As such, in so far as it is found by the Tribunal that the claimant suffers from permanent disability to the tune of 8%, I am of the view that he is entitled to compensation for loss of earning capacity, reckoning his monthly income at Rs.4,500/- applying the multiplier 15. The claimant is thus, entitled to a sum of Rs.64,800/- on that head. Thus, the claimant is entitled to a further sum of Rs.70,800/- towards compensation.

6. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7.5% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.70,800/- to the claimant by way of compensation. Needless to say, the claimant will be entitled

to interest for the whole amount of compensation at the rate of 9% per annum.

**P.B.SURESH KUMAR, JUDGE.**

smm