

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

MACA.No. 2290 of 2015

O.P(MV)NO.1366/2005 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM

APPELLANT(S)/PETITIONER :

**SMT. VIJAYALEKSHMI, AGED 52 YEARS,
D/O.SULOCHANA, KOCHUMADOM, PUNNAKKULAM NORTH,
K.S.PURAM P.O., ADHINADU, KOLLAM.**

**BY ADVS.SRI.K.SIJU
SMT.RENY ANTO**

RESPONDENT(S)/3RD RESPONDENT :

**THE BRANCH MANAGER,
THE NEW INDIA INSURANCE CO. LTD.,
KOLLAM BRANCH-691 001.**

**BY ADV. SRI.RAJESH THOMAS
BY ADV. SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

M.A.C.A.No.2290 of 2015

Dated this the 21st day of August, 2015

JUDGMENT

1. 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 cashew factory worker. The accident took place on 13.8.2005. The claimant was aged 42 years at the time of accident. A sum of Rs.1,00,000/- 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.18,750/- 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 Tribunal found that the claimant sustained comminuted fracture of the left patella in the accident. The Tribunal granted only a sum of Rs.2,000/- to the claimant towards loss of earnings. The claimant being a cashew factory worker, it is beyond doubt that the claimant might not have worked at least for a period of six months on account of the said injury. In the circumstances, I am of the view that the claimant is entitled to compensation for loss of earnings at least for a period of six months. Since the accident took place in the year 2005, in the absence of any proof of income, the monthly income of the claimant is liable to be fixed at Rs.4500/-. The claimant is thus entitled to a

further sum of Rs.25,000/- towards loss of earnings. Though a sum of Rs.15,000/- is awarded to the claimant by way of compensation for pain and sufferings, no compensation is seen awarded towards loss of amenities and enjoyments in life. Likewise, no compensation is seen awarded towards loss of earning power. In the circumstances, I am of the view that the claimant is entitled to be compensated adequately for loss of amenities and enjoyments in life. Having regard to the facts and circumstances of the case, I deem it appropriate to grant a sum of Rs.10,000/- to the claimant towards loss of amenities and enjoyments in life. Thus, the claimant is entitled to a further sum of Rs.35,000/- towards compensation.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.35,000/- to the claimant by way of compensation. Needless to say, the claimant will be entitled

to interest also for the enhanced compensation at the same rate at which the interest was awarded by the Tribunal for the compensation granted. It is made clear that the claimant will not be able to claim interest for the enhanced compensation for the period from 31.12.2005 to 6.4.2009 as ordered by the Tribunal in the impugned award.

P.B.SURESH KUMAR, JUDGE.

smm