

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

MACA.No. 1765 of 2011 ()

**OP(MV) NO. 456/2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA
DATED 25-04-2011**

APPELLANT/PETITIONER :

JOHNY
S/O. CHAKKAPPAN
PADAYATTIL HOUSE
PALAPPILLY DESOM
VARANDRAPPILLY VILLAGE
PALAPPILLY P.O.,
MUKUNDAPURAM TALUK.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS :

1. JOSEPH
S/O. ANTONY, PINDIAN HOUSE
VARANDARAPILLY P.O., THRISSUR – 680 303.
2. DASAN
S/O. VELAYUDHAN
CHANDRA HOUSE,
MANNUMPETTA P.O.,
AMBALLUR – 679 517.
3. UNITED INDIA INSURANCE CO.LTD.,
IRINJALAKUDA – 680 121.

R3 BY ADVS. SRI.K.KESAVANKUTTY
SRI.JOHN JOSEPH VETTIKAD

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

Mn

P.B.SURESH KUMAR, J.

M.A.C.A.No.1765 of 2011

Dated this the 7th 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 pump operator in the Irrigation Department. The accident took place on 20.1.2006. The claimant was aged 51 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.47425/- 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 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 fracture of both bones of his right leg in the accident. Ext.A3 is the wound certificate and Ext.A4 is the discharge card issued to the claimant from the hospital where he was admitted in connection with the injuries sustained in the accident. The Tribunal found from Ext.A4 that the claimant had undergone inpatient treatment for 17 days.

5. Though the accident took place in the year 2006, the Tribunal reckoned the monthly income of the claimant who is a Pump Operator in the Irrigation Department only at Rs.2000/- and granted compensation towards loss of earnings for a period of three months. Since the accident took place in the year 2006, in the absence of any evidence showing the income of the claimant, the monthly earnings of the claimant should have been reckoned at the rate of Rs.4,500/-. Therefore, the claimant is entitled to a further sum of Rs.7500/- on that head. Towards bystander's expenses, only a sum of Rs.1,700/- is seen granted to

the claimant. Since the accident took place in the year 2006, according to me, the bystander's expenses should have been granted by the Tribunal at Rs.250/- per day. Therefore, the claimant is entitled to a further sum of Rs.2,550/- on that head also. Towards continuing disability, the Tribunal granted a sum of Rs.13,200/- ($2000 \times 12 \times 11 \times 5 / 100$) reckoning the disability of the claimant at 5% and income at Rs.2000/-, applying the multiplier '11'. Since I have found that the income of the claimant should have been reckoned at Rs.4500/-, the claimant is entitled to a further sum of Rs.16,500/- on that head. It is now settled that even in cases where compensation for continuing permanent disability is granted, some amount needs to be granted towards loss of amenities and enjoyments in life. Only a sum of Rs.3,000/- is seen awarded towards loss of amenities and enjoyments in life. According to me, the claimant is entitled to a further sum of Rs.2,000/- on that head. Towards pain and sufferings, despite the injury referred to above, the claimant is granted only Rs.8,000/-. According to me, the compensation granted to the claimant towards pain and sufferings is highly inadequate. Having regard to the injuries sustained by the claimant and the treatment

undergone by him, I am of the view that the claimant is entitled to a further sum of Rs.7,000/- on that head as well. Thus, the claimant is entitled to a further sum of Rs.35,550/- towards compensation.

6. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7% 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.35,550/- 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