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 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 1077 of 2014 ()

AGAINST THE AWARD IN OPMV 967/2010 of SPL.C SPE/CBI-I&3 ADD.DC.ADD MACT,EKM DATED 26-12-2013

APPELLANT(S)/APPELLANT/PETITIONER:

SAJAN K.V AGED 52 YEARS
S/O. VELU, 'SREENILAYAM' (KOTHATTU HOUSE
SOUTH PARAVOOR P.O., THRIPOONITHURA, ERNAKULAM-682320.

BY ADVS.SRI.K.JANARDHANAN
SRI.K.J.MANU RAJ

RESPONDENT(S)/RESPONDENT/3RD RESPONDENT:

UNITED INDIA INSURANCE CO.LTD.
CHITTOOR ROAD, ERNAKULAM-682011.

R1 BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01-09-2015, 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. 1077 of 2014
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Dated, this the 1st day of September, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the injuries and the consequences suffered by the appellant herein in a road traffic accident occurred on 28.03.2010 is the subject matter of this appeal.

2. The appellant was proceeding on his motor cycle bearing No. KL 39 A 1687 on 28.03.2010 along with his wife. While so, a car bearing No. KL7 H 4248 owned by the first respondent, driven by the second respondent and insured with the 3rd respondent came from the opposite direction and knocked down the riders, causing serious injuries. The appellant was hospitalized and he had to undergo treatment for different spells, involving hospitalization for nearly 41 days. The claimant was examined as PW1 and documents were marked as Exts. A1 to A12. Extent of disability was got certified by the Medical Board and report was marked as Ext. X1. No evidence was adduced from the part of the contesting respondents, either oral or documentary. On culmination of the trial, the Tribunal arrived at a

finding that the accident was occurred due to the rash and negligent driving by the driver of the car (second respondent). The Tribunal observed that no document was produced by the claimant to establish his monthly income, which was stated as Rs.8000/- per month, by virtue of the alleged avocation as a Screen Printer. Considering the facts and circumstances and the extent of injuries sustained, the entire extent of disability fixed by the Medical Board as per Ext. X1 was reckoned for fixing compensation for permanent disability. In the absence of evidence as to the monthly income, the Tribunal chose to reckon Rs.4000/- as the monthly income on a notional basis. Amounts were awarded under different heads, granting a total compensation of Rs.205304/-, which was ordered to be satisfied with interest @ 8 % p.a. from the date of filing of petition i.e.28.06.2010

3. Heard the learned counsel for the appellant as well as the learned counsel for the Insurance Company.

4. Since the policy is admitted, the appellant has chosen to implead only the third respondent before the Tribunal, as the sole respondent before this Court in the appeal. Since there is no dispute with regard to the extent of disability, and also as to the identity of the vehicle and the coverage under the policy, we do not

find it necessary to cause impleadment of the owner or the driver of the vehicle, more so, since the dispute is only with regard to the quantum of compensation awarded.

5. When the matter came up for consideration before this Court earlier, considering the persuasive submission made by the learned counsel for the appellant, that much more disabilities are still in existence, he was caused to be examined by the Appellate Medical Board constituted in the Medical College Hospital, Thiruvananthapuram under the Chairmanship of the Superintendent of Medical College, who is stated as the ultimate authority as discernible from the proceedings bearing No. MH1-10224/15/DHS sent to the Registrar General of this Court. In response to the interim orders passed by this Court in this regard, after examination of the appellant, the Appellate Medical Board has submitted the finding, issuing disability certificate dated 17.04.2015, which has been forwarded to this Court through the Registrar General by the Superintendent of the Medical College Hospital, along with covering letter dated 11.05.2015. The certificate issued by the Appellate Medical Board clearly reveals the permanent disability to an extent of '12%', which is same as the extent of disability certified earlier by the Medical Board vide

Ext.X1, which in turn has been accepted by the Tribunal for working out the compensation. This being the position, this Court does not find it necessary to make any deviation as to the extent of disability. Rest is only with regard to the adequacy of the compensation awarded under the relevant heads. For convenience of reference, the amounts awarded, as it appears in Paragraph 13 of the Award, are extracted below :

Head	**Amount claimed**	**Amount Awarded**	**Details**
Loss of earning	30000	24000	4000 x 6 months
Partial loss of earnings	0	0	
Transportation expenses	5000	3000	
Damage to clothing	3000	2000	
Extra nourishment	3000	2000	
Medical treatment	25000	28174	(as per bills produced)
Loss of future prospects	100000		
Bystanders expenses	40000	10250	
Shock, pain and sufferings	75000	35000	
Compensation for continuing permanent disability	400000	74880	4000 x 12 x 13 x 12/100
Compensation for loss of earning power	30000		
Compensation for loss of amenities and enjoyment in life	70000	25000	
Compensation for disfigure-ment	50000		
TOTAL	**830000**	**205304**	

6. After going through the facts and figures, this Court finds that the appellant has been adequately compensated in respect of several heads and the only question is whether any enhancement of monthly income is necessary, so as to work out the compensation. The learned counsel for the Insurance Company submits that no document was ever produced by the appellant before the Tribunal to establish his income and no such document is produced in this appeal as well. However, weighing the evidence as a whole, more so in the light of the decision rendered by the Apex Court in **2014 (2) SCC 735 [Syed Sadiq and Ors. Vs. Divisional Manager, United India Insurance Co. Ltd.),** this Court is of the view that some variation is necessary considering the nature of case projected by the appellant, who was aged 48 years and was maintaining his family, and further that the accident occurred was recently, in the year 2010. Considering the money value and such other attending circumstances, we find it fit and proper to effect recalculation, adopting the monthly income as Rs.5000/- instead of Rs. 4000/-.

7. The Tribunal has awarded loss of earning for six months reckoning the notional income as Rs. 4000/-. On reworking the

compensation under this head, a sum of **Rs. 6000/**- is liable to be paid more. Similarly, in respect of permanent disability, recalculation is as follows; 5000 x 12 x 13 x 12/100 = Rs.93600/-. After crediting the amount already awarded, the balance figure will come to **Rs. 18720/-** (93600 - 74880). As such, the total balance compensation payable to the appellant will come to **Rs. 24720/**- (rounded to **Rs.25000/-).** The appellant is entitled to get the said amount with interest @ 8 % from the date of filing this petition i.e. from 28.06.2010. Since the policy has been admitted by the Insurance Company, the due amount shall be deposited before the Tribunal by the respondent Company, within one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of.

sd/-

P. R. RAMACHANDRA MENON,
JUDGE

sd/-
K. HARILAL,
JUDGE

kmd