IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

MACA.No. 517 of 2010 ( )

AGAINST THE AWARD IN OPMV 928/2003 of M.A.C.T.,KOLLAM
DATED 29-09-2009

APPELLANT(S):

GOPALA PILLAI, S/O KRISHNA PILLAI,
MATTATHU VEEDU, PUNAKKANNOOR, PERUMPUZHA
KOLLAM DISTRICT.

BY ADV. SRI.C.RAJENDRAN

RESPONDENT(S):
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1. P.S.NASER, S/O ZAYID MOHAMMED,
   PUTHENPARAMBIL VEEDU, R.P.COLONY P.O., 35TH MILE ROAD
   VANDAN PATHALIKARA, ERUMELI VILLAGE.

2. ZAYED ALAUDEEN, S/O.KUNJU MON
   PUTHUPARAMBIL, KOLAMAKKAL. [DELETED]

3. THE MANAGER
   THE ORIENTAL INSURANCE CO.LTD, KOLLAM BRANCH
   KOLLAM DISTRICT.

4. ABDUL JABBAR, ANOOR VILA PUTHENVEEDU
   HOUSE NO.359/VIII, KOTTAMKARA, PERUMPUZHA [DELETED]
   KOLLAM.

5. THE MANAGER, NATIONAL INSURANCE CO.LTD
   PARAMESWARAN PILLAI BHAVAN, HOSPITAL ROAD, KOLLAM.

RESPONDENT NOS.2 AND 4 ARE DELETED FROM PARTY ARRAY AT THE RISK OF APPELLANT AS PER ORDER 23.3.2015 IN I.A.NO.1233/15 IN MACA 517/09.

R3 BY ADV. SRI.TITUS MANI
R5 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2015, ALONG WITH MACA. 848/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

T.R.RAMACHANDRAN NAIR, &
K.P.JYOTHINDRANATH, JJ

M.A.C.A.Nos.517 & 848 of 2010

Dated this the 13th day of July, 2015

JUDGMENT

K.P.Jyothindranath, J

Both these appeals arose from the award dated 29.09.2009 in OP(MV) No.928/2003 on the files of M.A.C.T., Kollam.

2. M.A.C.A. No.517/2010 is filed by the claimant challenging the quantum of compensation awarded whereas, M.A.C.A. No.848/2010 is filed by the Insurance Company challenging the direction of the Tribunal in respect of payment of a portion of compensation. The facts in a nutshell is as follows.

3. On 21-12-2002, at about 12.45 p.m. a motor vehicle accident occurred on Kaipattoor - Adoor road. The vehicles involved are one maruthi van bearing Reg.No.KRA 9319 and an autorikshaw pick up van bearing Reg.No.KL-5/L 5170. The appellant in M.A.C.A. No.517/2010 is a passenger in the maruthi van.

4. The Tribunal after appreciating the materials, apportioned the negligence as 70% on the side of the driver of the autorikshaw and 30% that of the driver of the maruthi van.

5. When the appeal came up for hearing, the counsel for the appellant in M.A.C.A.No.517/2010 submitted before us that the compensation awarded by the Tribunal is inadequate. It is also the submission before us that even though the appellant sustained very grievous injuries, the compensation awarded on various heads are on a lower side. It is the submission that the appellant sustained 'supra condylar fracture right femur, fracture dislocation right wrist, Extensor tendon injury right middle finger and there were also other injuries all over the body. Apart from these, the appellant sustained injury of subdural Haematoma as well as there was myalgia on the upper eye lid. He was admitted and treated as in patient at Sree Uthradom Thirunal Hospital, Thiruvananthapuram. He was admitted therein on

13-01-2003 and discharged only on 28-01-2003. All these aspects were not considered by the Tribunal.

6. The appellant was aged about 60 years. He sustained permanent disability. Ext.A13 is the disability certificate, issued by an Orthopaedic Surgeon attached to SUT Hospital, Thiruvananthapuram, which shows that he had a permanent disability of 10%. It can be also seen that he was having 60% disability during the treatment period, that aspect should also have been taken by the Tribunal for granting compensation for loss of earning during the treatment period. It is also the submission that the monthly income considered by the Tribunal is also on a lower level.

7. The counsel for the third respondent Insurance Company of the autorikshaw submitted before us that even the finding of the Tribunal regarding the contribution of negligence towards the accident is wrong. It is the submission that even though it was a head on collusion, the Tribunal came to a conclusion that the

negligence of the driver of the autorikshaw is 70%. It is the further submission that, as per the scene mahazar, it can be seen that the place of accident is the middle of the road. If that be so, it is an indication that both the drivers are equally negligent.

5. The learned counsel for respondent No.5 who is the appellant in M.A.C.A.No.848/2010, submitted before us that the Tribunal went wrong in appreciating the policy liability. As per the policy, the insurance coverage is only for personal accident. If that be so, it should not have been misconceived as a motor accident coverage policy. It is the submission that there is also a limit as evident from Ext.B1 Policy Certificate. As per the said policy, the company is only liable to pay Rs.84,000/- that also only if a death occurs or there is 100% disability. In this case, the disability is only 10%. The corollary is that the company is liable only for an amount of Rs.84,00/-, (10% of the covered amount).

6. The counsel appearing for the respondents in

M.A.C.A.No.848/2010 submitted before us that there is no appeal by the respondent No.3 (Oriental Insurance Company) in the lower court. It is also submitted before us that the submission of the appellant in M.A.C.A.No.848/2010 is not correct. Nothing will be discernible from the policy that it is only a policy covering a personal accident excluding a motor vehicle accident. It is also the submission that an interference regarding the finding of the Tribunal in this regard is not warranted.

7. Thus, the first point to be considered is that how far the insurance company, who is the appellant in M.A.C.A.No.848/2010 will be liable. Second point is whether an interference in the quantum awarded by the Tribunal is warranted. If that be so, what will be the just compensation and who are all will be liable.

8. M.A.C.A.No.848/2010 is filed by the National Insurance Company Ltd. The main contention is that the liability of a passenger in the maruthi van is not covered by Ext.B1 Policy certificate. We perused Ext.B1 policy,

produced by the insurance company. It is seen that on the top of the same, it is printed as liability policy. In the schedule of premium attached to the same, it is written as personal accident to passengers No.1 amount Rs.84,000/-. The submission of the counsel for the appellant is that the amount shown is the upper limit and it is also the submission that, that amount will be payable only when there is 100% disability or there is a death. Appellant's counsel relied on the decision in **National Insurance Company Ltd. v. Murali** [2013(3) KLT 209]. We have perused the same. It is a decision relating to policy covering workmen's compensation. Here also additional premium paid. We are not agreeing with the submission of the counsel. When there is a coverage for an amount of Rs.84,000/-, then it cannot be said that only if a death or a 100% disability occurs, the amount will be payable. It can be only understood in the ordinary meaning that the limit of liability would be only Rs.84,000/-. Surely, it is printed as personal accidents to passengers, which means that personal accident coverage. But when the coverage is in respect of a passenger, it can be only be understood as a personal coverage in respect of a passenger who sustained injuries in a motor vehicle accident involving said vehicle. Thus, surely, as held by the lower court, the appellant insurance company will be liable to pay the compensation within the outer limit of Rs.84,000/-.

9. In this case, the appellant was aged 60 years at the time of accident. He sustained 'supra condylar fracture of femur, fracture dislocation right wrist, extensor tendon injury right middle finger and there is also a head injury, resulting subdural Haematoma. There is also myalgia on the right eye lid. He had undergone inpatient treatment for 52 days in total. Considering the age of the appellant and the further submission regarding his occupation, we feel that it will be only just and proper to adopt an income of Rs.2,500/- per annum. It can be seen that the injuries are grievous in nature. When an injury on

the supra condylar fracture in femur is therein and further there is a head injury resulting subdural Haematoma, he will not be in a position to do any work for at least six months. No amount is seen awarded towards the loss of amenities. Being an aged person who sustained the above mentioned injuries, we feel that the amount awarded towards the compensation for pain and suffering is also on a lower level. Thus a just compensation is refixed as follows:

Head of Claim	***Amount awarded in rupees***
(a) Loss of Earning for 6 months (2500x6)	Rs.15,000/-
(b) Expenses for Transportation	Rs.6,000/-
(c) Extra Nourishment	Rs.3,500/-
(d) Bystander Expenses (200x52)	Rs.10,400/-
(e) Damage to Clothing and Articles	Rs.1,000/-
(f) Medical Expenses	Rs.19,484/-
(g) Compensation for Pain and Suffering	Rs.35,000/-
(h) Compensation for the Loss of amenities in life	Rs.25,000/-
(i) Compensation for Continuing for Permanent disability (2500x12x10x9/100)	Rs.27,000/-

Head of Claim	***Amount awarded in rupees***
Total	Rs.1,42,384/- rounded as Rs.1,42,385/- (Rupees One lakh forty two thousand three hundred and eighty five only)

6. The appellant in M.A.C.A.No.517/2010 will be entitled for a total compensation of Rs.1,42,385/- (Rupees One lakh forty two thousand three hundred and eighty five only). Enhanced compensation will bear 9% interest from the date of petition. In respect of payment of such enhanced compensation, even though the respondent No.3 in M.A.C.A.517/2010 has got a case that the percentage of negligence attributed against respondent No.3 should have been changed in the light of the decision reported in **Bijoy Kumar Dugar v. Bidyadhar Dutta** [2006 (3) SC 242] where in that case it was a head on collusion, we feel that a change in the finding of the lower court is not warranted especially when respondent No.3 has not filed an appeal. Apart from the said finding, we have perused the documents and found that the width of the road is 5 meters and the accident spot is in the middle

of the road, but the damage caused to the maruthi van is only on the right side whereas, the damage caused to the autorikshaw is overall on the front side. Thus no change on the finding of this aspect is made.

Thus, M.A.C.A.No.517/2010 is allowed and awarded a total compensation of Rs.1,42,385/- (Rupees One lakh forty two thousand three hundred and eighty five only) with 9% interest on the enhanced amount from the date of petition. The enhanced amount with interest shall be deposited by the Insurance company at the rate as ordered by the Tribunal. The claimant is entitled for release of amount on deposit. M.A.C.A.No.848/2010 is dismissed. Parties will bear their cost in the appeals.

Sd/-
T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-
K.P.JYOTHINDRANATH, JUDGE

vs

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PA TO JUDGE