IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

MACA.No. 2383 of 2007 ( )

AGAINST THE AWARD IN OPMV 601/2003 of M.A.C.T.,PERUMBAVOOR DATED 06-06-2007

APPELLANT:

REENA JOSE W/O.JOSE
RESIDING AT KUNNAPPILLY HOUSE, THURUTHUSSERRY, MEKKAD
ALUVA.

BY ADVS.SMT.ANEY PAUL
SRI.PHILIP J.VETTICKATTU

RESPONDENTS :
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1. SULAIMAN @ ABBAS
S/O ABOOBAKER, KAROTHUKUDY HOUSE, KANDANTHARA
VENGOLA KARA, PERUMBAVOOR VILLAGE.

2. ASHARAF, S/O KUNJU MUHAMMED,
KOTTANGERIYIL HOUSE, VENNALA KARA, EDAPPALLY VILLAGE
ERNAKULAM DIST.

3. THE BRANCH MANAGER,
THE UNITED INDIA INSURANCE CO. LTD.
PRIVATE BUS STAND ROAD, PERUMBAVOOR.

R BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AV

P.N.RAVINDRAN
&
BABU MATHEW P.JOSEPH, JJ.

M.A.C.A.No.2383 of 2007

Dated this the 1st day of October, 2015.

J U D G M E N T

Babu Mathew P.Joseph, J.

The appellant sustained serious injuries in a motor accident that occurred on 01.12.2002 involving a car by which the appellant was travelling, a mini lorry driven by the second respondent, owned by the first respondent and insured with the third respondent, an autorickshaw and a lorry. In the accident, apart from the appellant, her husband, who was also travelling by the car, sustained injuries. The driver of the autorickshaw was injured and the passenger in that vehicle sustained injuries and later he succumbed to those injuries. The appellant has preferred a petition before the Motor Accidents Claims Tribunal, Perumbavoor, claiming compensation on account of the injuries sustained by her in the accident. The learned Tribunal, after considering the matter along with other claim petitions, found that the accident had occurred due to the negligence on the part of the second respondent and awarded a total compensation of ₹1,29,620/- under various heads to the appellant as follows :

Loss of income	-	₹ 8,000/-
Permanent disability	-	₹39,600/-
Expenses for transport	-	₹ 1,000/-
Extra nourishment	-	₹ 1,000/-
Damages to clothing	-	₹ 250/-
Expenses for bystanders	-	₹ 2,000/-
Expenses for treatment	-	₹42,770/-
Pain and suffering	-	₹20,000/-
Loss of amenities	-	₹15,000/-

The third respondent was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent Insurance Company. The respondents 1 and 2 remain absent despite serving notice on them.

3. The appellant was aged 52 at the time of accident. She has taken voluntary retirement before the accident from the State Bank of India. She was a housewife during the period of accident. She was taken to Ernakulam Medical Centre after the accident. She has sustained the following injuries : Laceration on the left occipital region. Multiple abrasions and contusions. Compression fracture of her first lumbar vertebra. Also suffered trochanteric fracture of right femur. C.T.Scan showed subarachnoid haemorrhage. She was, initially, treated with skin traction. Later, open reduction and internal fixation of fracture of femur were done. Floride Brace was applied. She was treated with antibiotics, analgesics and other supportive measures. She was discharged on 17.12.2002 with the advice to have bed rest. She was again admitted to that Hospital on 20.01.2003 when she was advised for partial weight bearing walking with walker and brace. She was discharged on 23.01.2003. Check X-ray taken on 22.04.2003 showed union was in progress. Therefore,

she was advised for full weight bearing mobilisation. X-ray on 13.08.2003 showed that the fracture united well. But, X-ray taken on 13.12.2003 showed that the head of femur was projecting out. She was again admitted to that Hospital on 23.06.2004. Then, the implant fixed was removed. After giving supportive treatment, she was discharged on 26.06.2004. She was reviewed on 05.07.2004 when she complained of pain in the right hip. Therefore, she was advised for partial weight bearing walking. She was advised for full weight bearing walking from 15.09.2004.

4. Ext.A32 is a certificate dated 15.09.2006 issued by Dr.M.S.Bosalai, Orthopaedic Surgeon and Civil Surgeon. It is certified in Ext.A32 that the appellant has a permanent whole body disability of 27%. The doctor who has issued Ext.A32 was examined before the Tribunal as PW1. He has justified in so many words before the Tribunal about the disability certified in Ext.A32. But, the learned Tribunal did not accept the quantum of disability

certified by the doctor in Ext.A32. The reason stated by the learned Tribunal, for not accepting fully the quantum of disability, reads as follows :

> Nowhere it is stated that the 27% disability affects her whole body.

This is against the true facts obtained in this case. PW1 categorically stated in Ext.A32 that the disability certified is in respect of the whole body. Moreover, he deposed before the Tribunal that the disability certified was for the whole body. PW1 has specifically narrated the injuries suffered by the appellant in the accident. The treatments given to the appellant are also adverted to in Ext.A32. Various disabilities being experienced by the appellant also have been specifically narrated in the disability certificate. Thereafter, the doctor arrived at the conclusion that the appellant has a permanent whole body disability of 27%. In the light of the foregoing facts, the finding entered by the learned Tribunal that the permanent disability certified by the doctor was not in respect of the whole body has no legs to stand.

Therefore, we vacate that finding. We accept the permanent disability of 27% certified by the doctor as true. Therefore, the appellant is entitled to compensation on that basis.

5. The appellant was a housewife aged 52 at the time of accident. She has retired from the State Bank of India before the accident. She could have engaged herself, if she wanted, in some gainful avocation. During the relevant period, she was discharging the functions of a housewife. The disability caused by the injuries sustained in the accident, in fact, disabled her to perform her duties as a housewife. If she wanted to do some work earning income, that was also affected by the disability. Therefore, in both the ways, she suffered directly or indirectly loss of income. The Tribunal fixed her monthly income at ₹2,000/-. This is insufficient in the light of the verdict rendered by the Honourable Supreme Court. Therefore, we fix the monthly income of the appellant at ₹3,000/- for the purpose of awarding compensation.

Going by the details of the injuries suffered, treatments undergone and the disabilities being experienced by her, we are of the view that the appellant could not have earned any income, at least, for a period of six months. Therefore, in the place of ₹8,000/- awarded by the Tribunal, we award ₹18,000/- under the head of loss of earnings. The learned Tribunal has awarded ₹20,000/- as compensation for pain and suffering. This is also insufficient in the light of various facts we have already adverted to. Therefore, we enhance the same to ₹30,000/-. The multiplier of 11 adopted by the Tribunal is appropriate in this case. Applying the said multiplier, the compensation for loss of earning power works out at ₹1,06,920/- (₹3,000x12x11x27/100). We allow the same in the place of ₹39,600/- awarded by the Tribunal. Similarly, we enhance ₹15,000/- awarded by the Tribunal under the head of loss of amenities to ₹30,000/-. We find no reason to interfere with the amounts awarded by the Tribunal under other heads. Thus, the appellant is entitled to an additional amount of ₹1,02,320/- (Rupees one lakh two thousand three hundred and twenty only) over and above the amount awarded by the Tribunal as compensation. The said amount of ₹1,02,320/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The third respondent Insurance Company shall deposit the amount within thirty days from the date of receipt of a copy of this judgment.

This appeal is allowed as above.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE

AV

/True Copy/

P.A to Judge