

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

MACA.No. 1856 of 2011 ()

**(AGAINST THE AWARD IN OP(MV).NO. 729/2007 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL, OTTAPPALAM DATED 07-02-2011)**

APPELLANT/PETITIONER:

**HAREESH.T.A., AGED 27 YEARS, S/O.APPU,
THEKKETHIL HOUSE, PANNIPADAM, P.O.CHELAKKARA,
VADAKKANCHERRY (VIA).**

**BY ADVS.SRI.SHEJI P.ABRAHAM
SRI.O.K.MURALEEDHARAN**

RESPONDENT(S)/RESPONDENTS:

- 1. SANTHOSHKUMAR, AGED 27 YEARS,
S/O.NARAYANAN, THOTTASSEERY HOUSE, MALAVATTAM,
THIRUVILLWAMALA-680 588 (OWNER CUM DRIVER OF
KL 8 AJ 8404).**
- 2. THE NEW INDIA ASSURANCE COMPANY,
P.B.NO.43, N.S.TOWERS, NEAR STADIUM BUS STAND,
COIMBATORE ROAD, PALAKKAD, PIN-679 008,
POLICY NO.761100/31/06/01/00002771 VALID FROM
24/5/2006 TO 23/5/2007.**

**R2 BY ADVS. SRI.A.A.ZIYAD RAHMAN
SRI.P.JAYASANKAR
SMT.RAJI T.BHASKAR**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 11-08-2015,ALONG WITH MACA.NO.1947 OF 2011,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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P.B.SURESH KUMAR, J.

M.A.C.A.Nos.1856 & 1947 of 2011

Dated this the 11th day of August, 2015

JUDGMENT

The claimants in two claim petitions before the Motor Accidents Claims Tribunal are challenging in these appeals the common award passed in the claim petitions.

2. The appellant in M.A.C.A.No.1856 of 2011 was the rider and the appellant in M.A.C.A.No.1947 of 2011 was the pillion rider of a motor cycle respectively. The accident occurred on account of the collision of the said motorcycle with the autorikshaw owned and driven by the first respondent. The second respondent is the insurer of the autorickshaw. The first respondent remained ex-parte. The second respondent contested the claim petition, contending, among others, that the accident occurred on account of the

negligence of the appellant in M.A.C.A.No.1856 of 2011. The Tribunal accepted the contention of the second respondent in part and found that the appellant in M.A.C.A.No.1856 of 2011 was negligent to the extent of 40% in causing the accident. Though the appellant in M.A.C.A.No.1947 of 2011 was not found responsible for the accident, the Tribunal had reduced the compensation payable to him also proportionately on that basis. As far as the appellant in M.A.C.A.No.1856 of 2011 is concerned, the Tribunal passed an award in his favour directing the insurer to pay a sum of Rs.19,595/- by way of compensation, after holding that the just compensation due to him is Rs.32,660/-. Likewise, as far as the appellant in M.A.C.A.No.1947 of 2011 is concerned, the Tribunal passed an award directing the insurer to pay a sum of Rs.28,010/- by way of compensation, after holding that the just compensation due to him is Rs.46,680/-. The appellants are aggrieved by the said decisions of the Tribunal.

3. Heard the learned counsel for the appellants as also the learned counsel for the second respondent, the insurer of the vehicle.

4. As far as the contributory negligence aspect is concerned, the case set up by second respondent is that the appellant in M.A.C.A.No.1856 of 2011 was not holding a licence to drive the vehicle involved in the accident and therefore, the negligence on his part is to be presumed. Though the second respondent had raised a contention that it is on account of the negligence of the appellant in M.A.C.A.No.1856 of 2011 that the accident had occurred, no evidence was let in by the second respondent in support of the said contention. Instead, they attempted to sustain the said contention solely based on the fact that the appellant in M.A.C.A.No.1856 of 2011 was not holding a licence. In **Sudhir Kumar Rana v. Surinder Singh & Ors.** [AIR 2008 Supreme Court 2405], the Apex Court held that merely for the reason that a person who was driving a vehicle was not

having a driving licence, it cannot be presumed that he is negligent in causing the accident. Paragraph 8 of the said judgment reads thus:

“If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini-truck which was being driven rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence.

A similar view has been taken by this Court in **Prajesh Kumar vs. Saji John and Others** [2009 (1) KHC 26] . In the light of the above decisions, in the absence of any independent evidence on the side of the second respondent to establish that the accident occurred on account of the negligence of the appellant in M.A.C.A.No.1856 of 2011, I am of the view that the finding of the Tribunal that the negligence of the appellant in M.A.C.A.No.1856 of 2011 also

contributed to the cause of the accident is unsustainable.

5. Coming to the quantum of compensation, the appellant in M.A.C.A No.1856 of 2011 is a welder. He was aged 27 years at the time of the accident. The accident took place on 8.5.2007. He sustained various injuries in the accident including fracture of radial and ulnar styloid. It is seen that Plaster of Paris was applied on the right hand of the claimant as part of the treatment. Despite the fact that Plaster of Paris was applied on the claimant, the Tribunal granted only a sum of Rs.3000/- towards loss of earnings. It is common knowledge that Plaster of Paris applied as part of the treatment for fractures will be removed only after 45 days. According to me, in such circumstances, the claimant should have been granted compensation for loss of earnings at least for a period of two months. The monthly income of the said claimant fixed by the Tribunal for granting compensation to him towards loss of earnings cannot also be accepted. Since the accident took place in the year 2007,

the monthly income of the claimant should have been reckoned at Rs.5,000/-. In the said circumstances, the claimant is entitled to a further sum of Rs.7,000/- towards loss of earnings. Towards pain and sufferings, only a sum of Rs.7000/- is seen awarded. Having regard to the injury sustained by the claimant, I am of the view that the claimant is entitled to a further sum of Rs.8,000/- on that head. Towards loss of amenities and enjoyments in life, only a sum of Rs.2000/- is seen granted to the claimant. The said compensation is also liable to be revised to Rs.5,000/-. The claimant is, therefore, entitled to a further sum of Rs.3,000/- on that head. Towards extra nourishment, only a sum of Rs.200/- is seen granted. On an evaluation of the materials on record, I am of the view that the claimant is entitled to a sum of Rs.2000/- towards extra nourishment. The claimant is therefore, entitled to a further sum of Rs.1,800/- on that head. Towards continuing permanent disability, though the claimant had produced a disability

certificate showing his permanent disability at 5.79%, the Tribunal reckoned the disability only at 3%. According to me, the claimant is entitled to compensation for permanent disability, reckoning his monthly income at Rs.5,000/- and disability at 3%, applying the multiplier '17'. The compensation payable to the claimant towards continuing permanent disability on that basis comes to Rs.30,600/- ($5000 \times 12 \times 17 \times 3 / 100$). Since the claimant has been granted a sum of Rs.18,360/- on that head, he is entitled to a further sum of Rs.12,240/-. The claimant is thus entitled to a further sum of Rs.32,040/- towards additional compensation.

6. The claimant in M.A.C.A.No.1947 of 2011 is also a welder. He was also aged 27 years at the time of the accident. He sustained various injuries including fracture of L3 vertebra in the accident. He was undergoing inpatient treatment in the hospital for 10 days. The said claimant produced Ext.A13 disability certificate, certifying permanent

disability at 12%. But the Tribunal reckoned the permanent disability of the claimant only at 4%. As in the case of the appellant in M.A.C.A.No.1856 of 2011, he is also entitled to a further sum of Rs.7000/- towards loss of earnings. Towards pain and sufferings, despite the injury referred to above and the prolonged hospitalization, only a sum of Rs.8,000/- is seen granted. The said compensation is also liable to be revised to Rs.20,000/-. Towards loss of amenities and enjoyments in life, only a sum of Rs.2,000/- is seen granted. The said compensation, according to me, is liable to be revised to Rs.7,000/-. Towards extra nourishment, only a sum of Rs.1000/- is seen granted. On evaluation of the materials on record, I am of the view that the claimant in this case is entitled to a further sum of Rs.2,000/- towards extra nourishment. Towards continuing permanent disability, the compensation payable was arrived at reckoning the monthly income of the claimant at Rs.3,000 and disability at 4%, applying the multiplier '17'. According

to me, the compensation payable to the said claimant on that head has to be worked out reckoning the monthly income at Rs.5,000/-. If the compensation due to the said claimant on that head is worked out on that basis, the compensation payable will come to Rs.40800/- ($5000 \times 17 \times 12 \times 4 / 100$) Since the claimant had already been granted a sum of Rs.24,480/-, he is entitled to a further sum of Rs.16,320/- on that head. Thus the claimant is entitled to a further sum of Rs.42,320/- towards additional compensation.

7. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 8% 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 appeals are allowed in part. The finding rendered by the Tribunal that the accident occurred on account of the negligence of the appellant in

M.A.C.A.No.1856 of 2011 also is vacated. The appellant in M.A.C.A.No.1856 of 2011 is granted a further sum of Rs.32,040/- by way of compensation. Likewise, the appellant in M.A.C.A.No.1947 of 2011 is granted a further sum of Rs.42,320/- by way of compensation. Needless to say, the claimants will be entitled to interest for the whole amount of compensation at the rate of 9% per annum.

P.B.SURESH KUMAR, JUDGE.

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