

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

MACA.No. 2411 of 2015 ()

(AGAINST THE AWARD IN OPMV 1056/2012 of I ADDL.D.C. &
ADDL.MACT,KOLLAM DATED 15-05-2015)

APPELLANT/PETITIONER:

SURESH KUMAR
S/O.SIVARAMAN PILLAI, SURESH BHAVAN, POOVATHOOR EAST
KALAYAPURAM P.O., KOLLAM DISTRICT
PIN: 691 560PRESENTLY RESIDING AT PANAYIL HOUSE CHERU MOODU
VELLIMON P.O., KUNDARA, PERINAD VILLAGE
KOLLAM DISTRICT, PIN: 691 511.

BY ADVS.SRI.G.RANJU MOHAN
SMT.M.SANTHI (K/868/2011)

RESPONDENTS/RESPONDENTS:

1. ANIL ABRAHAM
S/O.ABRAHAM, PALAKKAL HOSUE, HOUSE NO.4/69
PAZHAMUTTAM, KARIMKUNNAM P.O., THODUPUZHA
IDUKKI DISTRICT, PIN: 685 586.

2. BENNY ABRAHAM
S/O.ABRAHAM, PALAKKAL HOUSE, PIZHAKU
RAMAPURAM P.O., PALA, KOTTAYAM DISTRICT
PIN: 686 576.

3. M/S.UNITED INSURANCE COMPANY LTD
BEACH ROAD, CHINNAKKADA, KOLLAM.

BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-09-2015, 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.2411 OF 2015
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Dated this the 3rd September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J

The appellant was the claimant in O.P.(MV) 1056 OF 2012 on the file of the I Addl. MACT, Kollam. The claim was in respect of the injuries sustained by him in a motor traffic accident occurred on 19.04.2012. At the time of the accident, the appellant was riding the motor cycle bearing No.KL.02V/7295, when he was knocked down by a truck bearing No. KL.10U/6727 causing serious injuries. The claim preferred before the Tribunal was contested by the Insurance Company. There were other injured as well. The claims were considered together and a common award was passed by the Tribunal on 15.05.2015. The appellant herein was examined as P.W.1 . Documentary evidence consists of Annexures A1 to A28. No evidence, either oral or documentary, was adduced from the part of the respondents. After appreciation of the evidence, the Tribunal arrived at a

finding that the accident was only because of the negligence on the part of the driver of the truck and the liability was fixed accordingly. The case of the appellant is that he was a painter by profession and was earning monthly income of Rs.8000/-, but the Tribunal reckoned only Rs.5000/- as the monthly income and awarded amounts under various heads, granting a total compensation of Rs.99375/-, which was directed to be satisfied with interest at the rate of 7.5% from the date of the petition till realisation, fixing the liability upon the shoulders of the Insurance Company. Inadequacy of compensation made the appellant to approach this Court by filing this appeal.

2. Heard the learned Counsel for the appellant and the learned Standing Counsel for the Insurance Company.

3. The learned Counsel for the Insurance Company submits that policy coverage stands admitted and this being the position this Court does not find it necessary to issue notice to the respondents 1 and 2 and hence the same is dispensed with. As agreed by both the sides, the matter was heard in detail at the admission stage itself.

4. After going through the materials on record, this Court finds that fixation of negligence on the part of the driver of the truck does not require any modification. The question is only with regard to quantum of compensation awarded by the Tribunal. The fact that the appellant was aged 41 years and was employed as a painter with monthly income of Rs.8000/- was sought to be established by adducing oral evidence at the time when he was examined as P.W.1. No adverse inference could be elicited in the course of cross examination. It is also relevant to note that the appellant had produced Ext.A11 identity card as to his membership in the concerned Welfare Fund under the relevant labour legislation so as to establish his avocation. It is also seen that he was maintaining his family, consisting of his wife and minor daughters, who were claimants in OP.(MV)Nos.1045/12, 1044/12 and 1057/12 respectively. It is also a fact that the appellant/claimant was riding the motor cycle of his own and it was in the course of riding the motor cycle, the above accident occurred. These factors themselves are sufficient enough to arrive at a finding that the monthly income reckoned by the

Tribunal as Rs.5000/-, that too in respect of an accident occurred in the year 2012, is much on the lower side. We find it fit and proper to have the same raised to Rs.7000/-. The injuries sustained by the appellant have been extracted by the Tribunal with reference to Ext.A7, as discussed in paragraph 10 of the award. The consequences resulted have also been adverted to with reference to Exts.A9, A10 and A15. Disability certificate issued by the concerned doctor of the Medical College Hospital, vide Ext.A15, certifying 100% temporary disability and 10% permanent disability as per **Mc Bride** scale has also been discussed in paragraph 10. For convenience of reference, the same is extracted below:

- “1. *Range of movements of MCP joint of ® middle finger - 0.80 degree flexion.*
2. *Terminal loss of 20 degrees of extension of IP joints of ® middle finger*
3. *Radiologically malunited fracture of base of ® 5th metacarpal and PI ® middle finger*
4. *Weak grip strength of (R)hand*
5. *Ugly scar on the ® heel.*

6. *Limitation of terminal 15 degree of plantar and dorsi flexion of ® ankle.*

Ext.A7 would show that PW1 has sustained the following injuries:

1. *Contusion ® knee and ® foot*
2. *Laceration 3 x 1 cm chin*
3. *Laceration 2 x 1 cm ® side neck*
4. *Laceration 2 x 1 cm ® knee*
5. *Laceration 10 x 1 cm. ® arm*
6. *Suspected fracture first metacarpal and 5th metacarpal*

5. From the evidence discussed by the Tribunal , it is clear that the appellant had sustained serious injuries involving different fractures. Further, there was malunited fracture at the base of right 5th metacarpal. The adverse circumstances resulted, [particularly with regard to mobility of the limbs] are also evident from the extent of permanent disability certified by the doctor vide Ext.A15, at 10%. Despite this, absolutely no amount has been awarded by the Tribunal towards permanent disability, simply holding that there is no disability, which does not appear to be correct or proper. We find that so long as the

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extent of disability is not challenged and there is no serious dispute with regard to the discussion made by the Tribunal as to the nature and extent of injuries and the consequences resulted, we find it fit and proper to reckon the same as 10% as certified vide Ext.A15. The compensation already awarded by the Tribunal requires to be varied in the said circumstance. The amounts awarded by the Tribunal under different heads are extracted below:

Head	Amount awarded (Rs.)
Loss of earning	10000 (5000 for 2 months)
Transport of hospital	6235
Extra nourishment	2000
Damage to clothing	350
Bystander's expense	700
Medical expense	34090
Pain and suffering	25000
Loss of two teeth	4000 (2000 x 2)
Peramanent disability and loss of earning power	No disability
Loss of amenities	5000
Discomfort	5000
TOTAL	99375

6. This Court finds that the loss of earning has to be compensated for a period of 'three' months reckoning the monthly income at Rs.7000/- After giving credit to the sum of Rs. 10000/- , the balance amount is **Rs.11000/-**. Permanent disability has to be compensated , taking the monthly income as Rs.7000/- and also reckoning the extent of disability as 10%, with reference to the age factor of the appellant necessitating adoption of the multiplier of 15. This comes to **Rs.1,26,000/-** ($7000 \times 12 \times 15 \times 10/100$).The Tribunal has awarded a sum of Rs. 5000/- towards loss of amenities and Rs.5000/- towards discomfort. Taking these heads together, this Court finds it necessary to have the same raised to Rs.20000/- , so as to make the balance payment of **Rs.10000/-** An additional sum of **Rs.1000/-** requires to be paid towards bystander's expense considering 7 days' hospitalization. In respect of 'loss of teeth', it is fairly conceded by the learned Counsel for the appellant that the cost of replacement of teeth has already been satisfied under the medical expenses awarded by the Tribunal. However, considering the loss of teeth, it requires to be compensated to

some more extent and we enhance the same by a further sum of **Rs.6000/-** (in respect of loss of two teeth). In the above circumstance, the balance compensation payable to the appellant under all the relevant heads comes to **Rs.1,54,000/-** (Rupees one lakh fifty four thousand only). The said amount shall be satisfied with interest at the rate of **9%** from the date of filing the petition before the Tribunal till realisation. In view of the fact that the policy stands admittied, there will be a direction to the Insurance Company to deposit the due amount within one month from the date of receipt of a copy of the judgment.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**

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