

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 1229 of 2014

OP(MV) 985/2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MANJERI.

APPELLANT/PETITIONER:

**THANKAM, W/O. MANOJ KUMAR,
PATHAKKARA HOUSE, KALLEMPADAM,
NILAMBUR, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.VENUGOPAL (1086/92)
SMT.T.J.MARIA GORETTI**

RESPONDENT(S)/RESPONDENTS:

- 1. P. MAJEED, S/O. P. UMMER,
PARAMBAN HOUSE, PADIKKAD.P.O.,
MALAPPURAM DISTRICT, PIN - 676 521.**
- 2. JAMEELA, W/O. MOYIN, PUZHAKKAL HOUSE,
VALLUVANGAD.P.O., PANDIKKAD VIA,
MALAPPURAM DISTRICT, PIN - 676521.**
- 3. THE NEW INDIA ASSURANCE COMPANY LIMITED,
VARIKKODAN BUILDING, NILAMBUR ROAD,
MANJERI.P.O., MALAPPURAM DISTRICT, PIN - 676121.**

**R1 BY ADV. SRI.T.PRASAD
R3 BY SRI.A.A.ZIYAD RAHMAN, SC
SMT.T.C.SOWMIAVATHY**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 09-02-2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

mbr/

P.B.SURESH KUMAR, J.

M.A.C.A. No.1229 of 2014

Dated 9th February, 2015.

J U D G M E N T

The claimant in an original petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted to him by the Tribunal.

2. The claimant is a coolie. The accident took place on 18.9.2008. The claimant was aged 33 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the original petition by way of compensation for the injuries sustained by the claimant. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.8,634/- by way of compensation and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy issued by the third respondent at the time of accident, the third respondent was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the appellant/claimant and the learned counsel for the third

respondent/insurer.

4. Ext.A2 is the wound certificate of the claimant. In Ext.A2, it is recorded that fracture of medial malleolus is suspected. Ext.A4 is the discharge certificate issued to the claimant from the hospital where she was admitted and treated. In Ext.A4, it is recited that the claimant was hospitalised for seven days. Ext.X1 is the disability certificate issued to the claimant from the District Medical Board, Manjeri. In Ext.X1, it is recited that on 24.8.2011, when the claimant was examined by the Medical Board, she was having complaints of difficulty to extend the big toe. In Ext.X1, the permanent partial disability sustained by the claimant on account of the injuries was assessed at 4%.

5. A sum of Rs.18,000/- was claimed by way of compensation by the claimant towards loss of earnings. The Tribunal has reckoned the monthly income of the claimant at Rs.2,500/- and granted a sum of Rs.1,250/- towards loss of earnings for a period of 15 days. In so far as the accident took place in the year 2008, according to me, the monthly income of the claimant for the purpose of computing the compensation for loss of earnings should have been taken at Rs.4,500/-. If the compensation for loss of earnings is computed for a period of

one month reckoning the monthly income at Rs.4,500/-, the claimant is entitled to a further sum of Rs.3,250/- towards compensation on that head. It is beyond dispute that the claimant being a coolie, the disability noticed by the Medical Board would certainly affect her earning capacity. The claimant is, therefore, entitled to compensation for loss of earning capacity also. If the compensation for loss of earning capacity is worked out reckoning the monthly income at Rs.4,500/- and reckoning the disability at 2%, applying the multiplier of '16', the claimant will be entitled to a sum of Rs.17,280/-. Towards bystander's expenses, the claimant was granted only a sum of Rs.700/-. According to me, since the claimant was hospitalised for seven days during 2008, she is entitled to a further sum of Rs.1,050/- towards bystander's expenses. Towards extra-nourishment, no compensation is seen granted. According to me, the claimant is entitled to a sum of Rs.1,000/- towards compensation for extra-nourishment as well. Despite the injuries referred to above, only a sum of Rs.3,500/- is seen granted towards compensation for pain and sufferings. The said compensation is inadequate. In the nature of the injuries sustained and the treatment undergone by the claimant, she is certainly entitled to a further sum of Rs.6,500/-

towards compensation for pain and sufferings. Towards loss of amenities and enjoyments in life, claimant was granted only a sum of Rs.2,500/-. In the nature of the disability sustained by the claimant, she is entitled to a further sum of Rs.2,500/- towards compensation for loss of amenities and enjoyments in life. Thus, the claimant is entitled to a further sum of Rs.31,580/- towards additional compensation.

6. In the result, the appeal is allowed in part. The compensation granted by the Tribunal to the claimant is modified, granting a sum of Rs.31,580/- more by way of compensation. Needless to say, the claimant will be entitled to interest also for the enhanced compensation at the same rate at which the interest was awarded by the Tribunal for the compensation granted, except for the period of delay in filing the appeal, viz., 272 days, as ordered in C.M.Appln.No.1456 of 2014.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)