

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

MACA.No. 1932 of 2011

**AGAINST THE AWARD DATED 22-06-2010 IN OPMV 1722/2007 OF PRINCIPAL MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE**

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APPELLANT(S):

**VAISHNAV, AGED 9 YEARS,
DATE OF BIRTH 12.9.1999, REPRESENTED BY HIS
FATHER AND LEGAL GUARDIAAN AJITH KUMAR P.,
S/O.GOVINDAN NAIR, AGED 40 YEARS, RESIDING AT
CHERICHAYIL HOUSE, POST KUNNAMANGALAM,
VIA - KUNNAMANGALAM, KOZHIKODE.**

**BY ADVS.SRI.V.S.CHANDRASEKHARAN
SMT.LEKSHMI SWAMINATHAN**

RESPONDENT(S):

- 1. AUGUSTUS P.J., S/O.JOSEPH,
AGE NOT KNOWN,
RESIDING AT PINNAKKAT HOUSE,
KODANCHERY POST, KOZHIKODE - 673 015.**
- 2. BIJU JAMES,
AGED 42 YEARS, S/O.JAMES, PINANGOTTU HOUSE,
KODANCHERY POST, KOZHIKODE - 673 015.**
- 3. THE NATIONAL INSURANCE CO LTD.,
DIVISIONAL OFFICE, MAVOOR ROAD, KOZHIKODE - 673 015.**

BY ADV. SRI.M.A.GEORGE

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME
UP FOR ON 03-02-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

msv/

P.B. SURESH KUMAR, J.

M.A.C.A. No.1932 of 2011

Dated this the 3rd day of February 2015

J U D G M E N T

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted to him.

2. The claimant was a student aged 9 years at the time of accident. The accident took place on 01.05.2007. He sustained serious injuries in the accident including fracture of both bones of his left leg. He claimed a sum of Rs.1,00,000/- by way of compensation in the proceedings.

3. The Tribunal, on an evaluation of the materials on record, found that the claimant is entitled to only a sum of Rs.22,709/- by way of compensation and accordingly an award was passed for the said amount. Since the vehicle involved in the accident was covered by a valid Insurance Policy at the time of the accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said decision of the Tribunal and hence this appeal.

4. Ext.A2 is the wound certificate of the claimant.

It is recited in Ext.A2 that the claimant had sustained fracture of both bones of his left leg. Ext.A3 is the discharge card issued to the claimant from the Medical College Hospital, Calicut. Ext.A3 indicates that the claimant was admitted and treated as an inpatient in the hospital from 01.05.2007 to 05.05.2007. Ext.C1 is the disability certificate issued to the claimant by the Medical Board. In Ext.C1, it is certified that the claimant is suffering from 5% permanent disability. Accepting Ext.C1, the Tribunal granted a sum of Rs.11,250/- by way of compensation for loss of amenities and enjoyments in life, estimating the notional income of the claimant at Rs.15,000/- per year. According to me, in so far as it is established that the claimant sustained permanent disability, he is entitled to compensation for continuing the disability in addition to the compensation payable towards loss of amenities and enjoyments in life. In so far as the accident is of the year 2007, according to me, the Tribunal should have reckoned the notional income of the claimant for the purpose of determining the compensation for continuing permanent disability at Rs.30,000/- per year. If the compensation payable

on that head is worked out on the estimated notional income of Rs.30,000/- per year, the claimant is entitled to a sum of Rs.22,500/- by way of compensation on that head. In addition, according to me, taking note of the fact that the claimant sustained fracture of both bones of his left leg and taking note of the fact that he underwent treatment as inpatient in the Medical College Hospital, Calicut for five days, he is entitled to a sum of Rs.10,000/- by way of compensation towards loss of amenities and enjoyments in life also. In so far as the Tribunal has granted a sum of Rs.11,250/- towards compensation for loss of amenities and enjoyments in life, the said compensation is liable to be reduced to Rs.10,000/-. The Tribunal has granted only a sum of Rs.10,000/- to the claimant towards compensation for pain and sufferings and according to me, the claimant is entitled to a further sum of Rs.5,000/- towards compensation for pain and sufferings. Towards bystander's expenses, for the five days of hospitalization, it is seen that the Tribunal has granted a sum of Rs.500/-. According to me, the claimant is entitled to a further sum of Rs.750/- towards bystanders expenses. Thus, the claimant is

entitled to a further sum of Rs.27,000/- by way of compensation.

In the result, the appeal is allowed in part and the impugned award is modified granting a further sum of Rs.27,000/- to the claimant towards compensation. Needless to say, the claimant is entitled to interest also for the enhanced compensation granted at the same rate at which the interest was granted by the Tribunal.

Sd/-
P.B. SURESH KUMAR
JUDGE

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