

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN  
&  
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

MACA.No. 2317 of 2013 ()  
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AGAINST THE AWARD IN OPMV 598/2010 of MACT PALA DATED 30-11-2012  
APPELLANT(S)/PETITIONER/APPELLANT:  
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HAMSA  
S/O. KUNJALAVI, ANANDASSERRY HOUSE  
POONJAR THEKKEKARA VILLAGE, THALANADU P.O.  
ELAVUMPARA COLONY, KOTTAYAM DISTRICT.

BY ADVS.SRI.C.M.TOMY  
SRI.MATHEW SKARIA  
SRI.K.J.JOSEMON  
SRI.SUJESH J.MATHEW

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:  
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1. PAREEKOCHU  
S/O. MEERAN, PEZHUMKATTIL HOUSE, ERATTUPETTA VILLAGE  
NADACKAL P.O. PATHAZHAPADY BHAGOM  
KOTTAYAM DISTRICT-686124.

2. ICICI LOMBARD GENERAL INSURANCE CO. LTD.  
REP. BY ITS MANAGER, 3RD FLOOR, KAMMANKARI ESTATE  
MARINE DRIVE, COCHIN-682011.

R1 BY ADV. SRI.V.K.PEERMOHAMED KHAN  
R1 BY ADV. SRI.H.SUNIL  
R2 BY ADV. SRI.R.AJITH KUMAR VARMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

kkj

**K.SURENDRA MOHAN &  
MARY JOSEPH, JJ.**

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**M.A.C.A. No.2317 of 2013**  
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**Dated this the 10<sup>th</sup> day of July, 2015**

**J U D G M E N T**

Mary Joseph, J.

The petitioner herein is the claimant in OP(MV) No. 598 of 2010 on the file of the Motor Accidents Claims Tribunal, Pala (hereinafter referred to as 'the Tribunal' in short). The first respondent is the owner-cum-driver of the Autorickshaw which is involved in the accident and the second respondent is the insurer. The claim petition was filed before the Tribunal, Pala by a 62 year old man under Section 166(1) of the Motor Vehicles Act, 1988 (Referred hereinafter for convenience as 'the Act'), claiming compensation for injuries sustained in a motor accident that occurred at 5.45 PM on 10.04.2010. The claimant was hit by an autorickshaw bearing Reg. No.KL.5/T 6186 at Earattupetta Town, due to the rash and negligent driving of the 1<sup>st</sup> respondent. The Tribunal on the basis of the

materials placed on record found fault with the 1<sup>st</sup> respondent and arrived at a compensation of ₹62,800/- and the second respondent was directed to deposit the Award amount within sixty days from the date of the Award with interest at the rate of 7.5% per annum from 22.07.2010, the date of filing of the petition till the date of deposit.

2. Dissatisfied by the compensation awarded by the Tribunal that the petitioner has now come up in appeal. His grievance was addressed by Sri.C.M.Tomy, his counsel. According to Sri.C.M.Tomy, the petitioner has sustained crush injury on his left foot with lacerated wound and an Orthopaedic Surgeon has assessed 7% permanent disability to his body as a whole. He was also treated in various hospitals as inpatient for about 44 days. But, the Tribunal, Pala while arriving at the compensation payable considered only loss of earnings for three months, disability of 2% against the assessment of 7% by the Doctor in Exhibit A10 and meagre disproportionate sums under other heads and

accordingly arrived at a total compensation of ₹62,800/- which is low and highly unreasonable. He canvassed interference with the Award of the Tribunal and enhancement of the compensation reasonably.

3. Per contra, Sri.R.Ajitkumar Varma appearing for the second respondent has contended that eventhough Exhibit A10 Certificate is produced, it was issued only by a single Medical Practitioner and not by a Medical Board. According to him, the injury sustained by the petitioner is not that much serious and it is unlikely to cause any disability.

4. Upon hearing contentions put forward and perusing the Award under challenge, we also feel that the compensation awarded is low. From Exhibits A7, A8 and A9, it is made clear that the petitioner had undergone inpatient treatment at various hospitals for a total period of 44days. He has sustained crush injury on his left foot with lacerated wound. It is true Exhibit A10 was not issued by a

Medical Board. But it was issued by an Orthopaedic surgeon, a Registered Medical Practitioner. Exhibit A10 is also self explanatory of the reasons for arriving at the disability. The petitioner could have very well got the Doctor examined. However, that effort was not taken, and thereupon the Tribunal cannot be found fault with in not considering the disability as such. Nevertheless, the petitioner's age factor is also to be looked into. He being old, the injury sustained definitely would have serious impact. Therefore, we feel it appropriate to consider 3% as his disability.

5. The Tribunal has only considered ₹12,000/- i.e., three months loss of earnings, ₹23,000/-, for pain and sufferings, ₹4,800/- for disability, and ₹11,000/- for loss of amenities. The compensation fixed under the aforesaid heads appear to us low. Therefore, we feel it appropriate to enhance the compensation amount by considering loss of earnings for one more month, ₹2,000/- more towards pain

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and sufferings, ₹4,000/- more towards loss of amenities and ₹2400/- more towards disability. Therefore, the amount of compensation under various heads after enhancement would come to:-

Compensation for:-

|                               |           |
|-------------------------------|-----------|
| Loss of earnings (₹4,000x4)   | ₹16,000/- |
| Pain and suffering            | ₹25,000/- |
| Loss of amenities             | ₹15,000/- |
| Disabilities(4000x12x5x3/100) | ₹27,200/- |

The compensation awarded under the other heads are not interfered with.

6. In the result, the M.A.C.A. is allowed. The compensation already awarded by the Tribunal is modified by enhancing it by ₹12,400/-. Therefore, the petitioner would be entitled to a total sum of ₹75,200/- with interest at the same rate for the same period as arrived at by the Tribunal.

The accident was in the year 2010. The Award was of the year 2012. The petitioner has been knocking doors

after doors for getting a reasonable compensation. Five years have already elapsed after the accident and three years, after the passing of the Award. In the said circumstances, the fruits of the Award should reach the petitioner, who is aged 67 years now, without further delay. Therefore, the 2<sup>nd</sup> respondent is directed to deposit the sum modified as supra without fail, within one month from the date of receipt of a copy of this judgment.

Sd/-  
**K.SURENDRA MOHAN,**  
**JUDGE**

Sd/-  
**MARY JOSEPH**  
**JUDGE**