

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

MACA.No. 1946 of 2011 ()

AGAINST THE AWARD IN OPMV 710/2008 of M.A.C.T., KOTTAYAM DATED 21-05-2011

APPELLANT/PETITIONER:

BINU JOSEPH, AGED 38 YEARS,
S/O. JOSEPH, KARUKAKKALAM HOUSE, P.O. RAMANKARY
ALAPPUZHA DISTRICT-689 595.

BY ADVS. SRI.M.R.VENUGOPAL
SMT.DHANYA P.ASHOKAN

RESPONDENT(S)/RESPONDENTS:

1. BIJU @ BIJU JOSEPH,
KANNANKERIL HOUSE, P.O. PALLICKATHRA - 686 537
VALLONCHIRAKULAM, PAIPPADU.
2. K.C.JOSE, KULAPARAMBAN HOUSE,
CHERIYA VAPPALLASSERY, NEDUMBASSERY, ALUVA - 689126.
3. THE UNITED INDIA INSURANCE CO. LTD.,
KOTTAYAM - 686 001.

R-3 BY ADV. SRI.P.K.MANOJKUMAR
SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.1946 OF 2011

DATED THIS THE 16th DAY OF DECEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Inadequacy of the compensation by the Tribunal under various heads, granting a total sum of ₹6,27,472/-, is sought to be intercepted by seeking for enhancement in this appeal preferred by the claimant.

2. On 27.12.2005, the appellant was travelling as a passenger in a KSRTC bus bearing No.KL 15/4478, owned, driven and insured by the respondents 1 to 3 before the Tribunal. While so, there occurred a collision between the bus and a tipper lorry bearing No.KL 5/J 8622, pursuant to which, serious injuries were caused to the appellant, which was sought to be compensated by filing the claim petition before the Tribunal. The respondents were parties in relation to the tipper lorry and the liability was sought to be mulcted upon them based on the negligence attributed on the driver of the lorry. The said claim petition was tried along with other connected cases, whereby loss was sought to be compensated

by other similarly situated persons who were passengers in the KSRTC bus. All the cases were tried together by way of joint trial. The evidence adduced before the Tribunal consists of the oral deposition of the witnesses examined as PWs 1 to 3 and documents produced and marked as Exts.A1 to A94 and Ext.X1. Among the said witnesses, PW3 is the Doctor, who vouched the authenticity of the medical records produced by the appellant herein. The documents produced and marked as Exts.A41 to A52 pertain to the cause of action projected by the appellant. Based on the evidence adduced, the Tribunal arrived at a finding that the accident was merely because of the negligence on the part of the driver of the lorry and proceeded to work out the compensation accordingly.

3. The claim projected before the Tribunal was that the appellant herein who was aged 32 years was working as a dye maker/welder/blacksmith in the Power Engineering Industrial Estate, Ettumanoor and he was having a monthly income of ₹8,000/-. It was also stated that by virtue of the nature of the injuries and consequences resulted, the appellant was not in a

position even to lift his right hand properly, which very much adversely affected the avocation, particularly, as a dye maker/welder/blacksmith. Extent of disability was certified by the Doctor as per Ext.A49, specifying different extents under different heads. The Tribunal observed that no evidence was adduced with regard to the exact income. Reckoning a notional income of ₹4,000/- per month and reckoning 50% as the total whole body disability, the compensation for disability was worked out, granting a total sum of ₹6,27,472/- which was directed to be satisfied with interest @7.5% per annum from the date of the petition.

4. Heard learned counsel appearing for the appellant as well as the learned counsel for the Insurance Company.

5. The main contention projected by the learned counsel for the appellant before this Court was that, there is an observation by the Tribunal itself in paragraph No.52 of the Award that the right hand of the appellant has virtually become useless. The different extents of disability have been spoken to by the concerned Doctor, who was examined as PW3, with

reference to the contents of Ext.A49 disability certificate. Still, the Tribunal chose to reckon only 50% as the whole body disability and hence seems to have chosen to reckon the disability in respect of the right hand as complete. The observation made by the Tribunal with reference to Ext.A49 as given in paragraph No.47 of the Award is in the following terms.

“47. Ext.A49 is a disability certificate issued from the Medical Trust Hospital, Ernakulam. The doctor who issued the certificate tendered evidence as PW3. According to the doctor, petitioner had 50% disability on his right elbow, 25% disability on his wrist, 100% disability on his little finger, 50% disability on ring finger and 60% disability on right thumb. Even though the doctor gave evidence, he cannot say the exact percentage of whole body disability.”

6. It has been observed by the Tribunal that the Doctor who was examined as PW3 could not depose before the Court as to the exact percentage of whole body disability, which made the Tribunal to strike a balance and reckon 50% as the disability, based on the different extents specified in respect of different fingers of the right hand and the right wrist/right elbow. When

the matter came up for consideration before this Court on the last occasion, the learned counsel was required to ascertain whether the appellant was desirous of getting examined by a competent Medical Board to assess the disability afresh. After getting instructions, the learned counsel submits that the appellant will be satisfied, if some modification is made by this Court to an appropriate extent considering the totality of the circumstances. In the above circumstance, we proceed to consider the adequacy of the compensation awarded under different heads.

7. After hearing both the sides and also after going through materials on record, this Court finds that the disability certified by the Doctor, who was examined as PW3, is in respect of the different fingers/wrist/elbow and admittedly, the whole body disability was never deposed by the Doctor, nor was it mentioned in Ext.A49. It was in the said circumstance, particularly considering the nature of avocation of the appellant/claimant, that the Tribunal thought it fit and proper to reckon the whole body disability as 50%. We do not find

anything illegal, arbitrary or irregular with regard to the course pursued by the Tribunal in this regard and hence we accept the total whole body disability as 50% to work out the compensation.

8. However, considering the quantum of compensation awarded, notional income of the appellant was reckoned only as 4,000/- per month. There is also an observation by the Tribunal that no evidence was adduced to prove the income. But the fact remains that the appellant/claimant was aged 32 years and his employment was sought to be proved by producing Ext.A51, which is the employment certificate issued by the concerned employer. That apart, the appellant had also produced Ext.A50, which is a Provisional National Trade certificate issued by the Industrial Training Institute, Changanacherry, which shows that the claimant was a 'skilled worker' and cannot be deemed as a general worker. Under such circumstance, some allowance can be given as to the probable notional income and as such, the fixation made by the Tribunal requires interference. We find it fit and proper to enhance the same by 50%, thus reckoning notional monthly income as ₹6,000/- in place of ₹4,000/-.

9. The amounts awarded by the Tribunal under each head as given in paragraph No.53 of the Award are in the following terms.

Sl. No.	Head of claim	Amount claimed (in Rupees)	Amount awarded (in Rupees)	Basis vital details in a nut shell
1.	Transport to hospital	₹25,000.00	₹ 9,478.00	As per Ext.A46 series
2.	Extra nourishment	₹15,000.00	₹ 2,000.00	Nominal amount
3.	Damage to clothings	₹ 1,000.00	₹ 750.00	-do-
4.	Bystander expenses	₹50,000.00	₹ 6,000.00	100x60=6,000/-
5.	Medical expenses	₹5,00,000.00	₹1,03,244.00	Admissible medical bills
6.	Temporary loss of income	₹2,25,000.00	₹ 48,000.00	Income loss for 1 year at the rate of ₹4,000/- per month
7.	Pain and sufferings	₹2,00,000.00	₹ 25,000.00	In view of the pain suffered by the petitioner as a result of
8.	Loss of amenities	₹2,00,000.00	₹ 25,000.00	In view of the fracture injuries
9.	Permanent disability	₹5,00,000.00	₹4,08,000.00	48,000x50x17 divided by 100 = 4,08,000/-
10.	Loss of earning power	₹2,00,000.00	Not allowed	Compensation for loss of amenities and disability granted
11.	Loss of earning (Partial)	₹2,00,000.00	-do-	Temporary loss of income granted
	TOTAL	₹21,16,000.00	₹6,27,472.00	

On reworking the compensation payable based on the enhanced notional monthly income, we find that the temporary loss of

income granted by the Tribunal for a period of 'one year' considering different spells of treatment involving three surgeries at different hospitals, requires to be modified, which comes to ₹6,000/-x12=72000/-. After giving credit to the sum of ₹48,000/- already awarded by the Tribunal, the balance is **₹24,000/-**. The compensation for the permanent disability requires to be modified in the above circumstance, which comes to $6000 \times 12 \times 50 / 100 \times 17 = 6,12,000/-$. The Tribunal has awarded a sum of ₹4,08,000/- under this head. The balance comes to **₹2,04,000/-**. It is seen that the appellant/claimant was hospitalised for nearly 60 days and three different surgeries were undergone by him suffering much pain and ordeal. The Tribunal itself has found it necessary to grant loss of earning for a period of one year. In the said circumstance, the loss of amenities awarded by the Tribunal limiting the sum to an extent of ₹25,000/- appears to be inadequate and hence we grant a further sum of **₹25,000/-** under this head as well. A similar treatment requires to be made with regard to the quantum of compensation payable for pain and suffering as well. We award a further

amount of **₹25,000/-** under this head.

In the above circumstances, the total balance compensation payable comes to **₹2,78,000/-** which requires to be satisfied with interest @ 9% per annum from the date of the petition, i.e., 6.5.2008, till satisfaction. Since issuance of coverage of the policy stands admitted, there will be a direction to the respondent-Insurance Company to deposit the due amount within a period of one month from the date of receipt of a copy of this judgment.

The appeal will stand allowed to the above extent. No cost.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

dsn

True copy

P.S.to Judge