

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

MACA.No. 1002 of 2009 ()

AGAINST THE AWARD IN OPMV 884/2002 of MACT ALAPPUZHA DATED 22.06.2012

APPELLANT/APPLICANT:

ASOKAN, AGED 40 YRS,
S/O.DAMODARAN, ASWATHY BHAVAN, MARUTHORVATTOM P.O.
C.M.C.-12, CHERTHALA TALUK.

BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA

RESPONDENTS/RESPONDENTS:

1. THE HEADMISTRESS, OUR LADY OF MERCY
SCHOOL, AROOR P.O., CHERTHALA TALUK
ALAPPUZHA.

2. VIJAYM.A.V., S/O.VIDHYADHARAN,
AMMANEZHATH VEETIL, NORTH OF AMMANEZHATH, TEMPLE
AROOR P.O., AROOR VILLAGE, CHERTHALA
TALUK.

3. THE NATIONAL INSURANCE COMPANY LTD.,
REP. BY ITS BRANCH MANAGER, COCHIN-
AROOR BYE-PASS JUNCTION, ST.AUGUSTINE'S
CHURCH BUILDING, AROOR, CHERTHALA TALUK
AROOR P.O-688 534.

R3 BY ADV. SRI.JOE KALLIATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 31-08-2015, 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. 1002 OF 2009
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Dated this the 31st August, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

Inadequacy of compensation awarded by the Motor Accidents Claims Tribunal, Alappuzha in O.P(MV)No.884 of 2002 involving a road traffic accident is the subject matter of consideration in this appeal.

2. The appellant herein was riding a M-80 motor cycle bearing No.KL.4/B.8637 when it was knocked down at the place of occurrence on 20.09.2001 by a bus bearing No. KL.4/H-8705 driven by the second respondent, owned by the first respondent and insured by the third respondent. Serious injuries were resulted because of the accident and the injured was taken to a hospital. After discharging from the hospital, a claim petition was filed before the Tribunal. The owner and driver of the vehicle did not contest the matter and remained exparte. The policy was admitted by the third respondent/Insurance Company.

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3. After culmination of the trial, the Tribunal granted a total compensation of Rs.65500/-, which has been ordered to be satisfied by the insurer with interest at the rate of 7.5% from the date of filing of the petition, i.e. 22.06.2002 till realisation. This is sought to be enhanced in this appeal filed by the claimant.

4. Since policy is admitted, we do not find it necessary to issue notice to the respondents 1 and 2 and notice to them is dispensed with; more so when the delay was condoned after completion of service of notice to the respondents.

5. The learned Counsel for the third respondent/Insurance Company submits that there is no dispute with regard to coverage of the vehicle under the policy. The learned Counsel also submits that the Tribunal has considered all the relevant aspects and has awarded the compensation which does not require any variation. However, taking note of the fact that the injured was a youth, aged 34 years and considering the extent of injuries, we find that some modification is necessary .

6. The injuries sustained by the claimant are in the following terms:

"Degenerated cervical IV discs with bilateral nerve root compression at the C4/5 and C5/6 levels. Soft tissue injury and cervical spondylosis. Neck pain and superficial soft tissue injury and contusion to the forehead. "

7. It is seen that the disability has been certified by the concerned doctor as per Ext.A14 to an extent of 20%. But the same has been reckoned by the Tribunal only at 12%. Obviously the certificate has not been issued by any Medical Board, nor was any step taken by the claimant to examine the doctor who issued the medical certificate. This being the position, we do not find it fit and proper to intercept the course pursued by the Tribunal with regard to fixation of disability . However, the Tribunal has reckoned only a sum of Rs.1500/- as the monthly income. Considering the totality of the circumstances, we find it fit and proper to enhance it to Rs.2500/-. The multiplier adopted is '17'. In the said circumstance, the compensation

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payable in respect of disability comes to **Rs.61200/-** ($2500 \times 12 \times 12/100 \times 17$). After giving credit to the sum of Rs.36750/- awarded by the Tribunal under this head, the balance payable comes to **Rs.24450/-**. The Tribunal has awarded a sum of Rs.12000/- towards pain and suffering, we enhance it to Rs.15000/-. Hence the balance payable under this head is **Rs.3000/-**. In respect of loss of amenities sustained by the claimant only a sum of Rs.2000/- has been awarded by the Tribunal, which is abysmally low. Considering the nature and extent of injuries, we find it fit and proper to have it enhanced to Rs.10000/-. As such, the balance payable is **Rs.8000/-** under this head.

8. In the above circumstance, we find that the appellant is entitled for balance compensation of **Rs.35450/-** (Rupees thirty five thousand four hundred and fifty only), which is to be satisfied with interest at the rate of 9% per annum from the date of filing of the petition till the date of realisation. In view of the fact that the policy is admitted by the Insurance Company, the third

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respondent is directed to satisfy the enhanced compensation within one month from the date of receipt of a copy of the judgment.

Appeal stands disposed of.

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

**K. HARILAL,
JUDGE**

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