

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

MACA.No. 2533 of 2015 ()

OPMV 1185/1998 of IST ADDL.MOTOR ACCIDENT CLAIM TRIBUNAL, KOZHIKODE,

APPELLANT/PETITIONER :

**KANNAN, AGED 54 YEARS,
RESIDING AT KOTTEL HOUSE,
PAYYANAKKAL AMSOM DESOM, KOZHIKODE.**

**BY ADVS.SRI.JIJI THOMAS
SMT.SMITHA MATHEW
SRI.ASHOK KUMAR P.R**

RESPONDENTS/RESPONDENTS :

- 1. P.P. RUKHIYA
RESIDING AT CHOOLAPARAMBATH (H),
KOTTAKKAL, IRINGAL, BADAGARA - 673504**
- 2. THE ORIENTAL INSURANCE COMPANY LTD,
P.B.NO.27, SREENIDHI BUILDINGS, NARAYANA NAGAR,
BADAGARA - 673504**

**R2 BY ADV. SRI.N.S.NAJEEB
BY SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

P.B.SURESH KUMAR, J.

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M.A.C.A.No.2533 of 2015.

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Dated this the 27th day of October, 2015.

J U D G M E N T

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

2. The claimant is a Coolie. He was aged 47 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.63,908/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by

the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. The Tribunal found that the claimant sustained fracture of both bones of his right leg in the accident and that he had undergone inpatient treatment in the hospital on two spells. Initially he was admitted in the hospital on 17.5.1998 and discharged on 27.6.1998. He was again admitted on 9.3.1999 and discharged on 7.4.1999. The Tribunal also found that during the first spell of hospitalisation, open reduction and internal fixation were done on 12.6.1998 and during the second spell of hospitalisation, the implant was removed. The compensation due to the claimant has to be determined in the light of the aforesaid facts.

5. The accident took place on 16.5.1998. As indicated above, the claimant was discharged from the hospital after the second spell of admission, only on 7.4.1999. In other words, the claimant was under treatment

for almost an year. Only a sum of Rs.3,750/- has been granted to the claimant by the Tribunal towards loss of earnings. Since the claimant, who is a coolie, was undergoing treatment for almost an year, according to me, he is entitled to loss of earnings at least for a period of one year. Since the accident took place in the year 1998, I deem it appropriate to reckon the monthly income of the claimant at Rs.2,000/-. He is, therefore, entitled to a sum of Rs.24,000/- towards loss of earnings. Since the claimant has been granted only a sum of Rs.3,750/-, the claimant is entitled to a further sum of Rs.20,250/- towards loss of earnings.

6. The claimant is seen granted only a sum of Rs.12,000/- towards loss of amenities and enjoyments in life. It seems that since the claimant has not produced any disability certificate, only a sum of Rs.6,000/- has been granted towards compensation for loss of earning power. Having regard to the nature of injuries sustained by the claimant and the prolonged treatment including the surgical

procedures undergone by him, I am of the view that the compensation granted to the claimant towards loss of amenities and enjoyments in life is highly inadequate. According to me, since the the claimant was granted only a sum of Rs.6,000/- towards loss of earning power, he should have been granted at least a sum of Rs.25,000/- towards loss of amenities and enjoyments in life. The claimant is, therefore, granted a further sum of Rs.13,000/- towards compensation on that head. Thus, the claimant is entitled to a further sum of Rs.33,250/- towards compensation.

7. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 6% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.33,250/- to the claimant by way of compensation. Needless to say, the claimant will be entitled

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to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz., 2815 days as ordered in C.M.Application No.2899 of 2015.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**

Kvs/-

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PA TO JUDGE.