

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

MACA.No.2051 of 2011

**OP (MV) NO.173/2006 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THODUPUZHA.**

APPELLANT/PETITIONER:

**TOMI,S/O.DEVASSIA,THEVARUPARAYIL HOUSE,
KALIYAR KARA,VANNAPPURAM VILLAGE,
THODUPUZHA TALUK.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH**

RESPONDENT'S/RESPONDENTS:

- 1. RAJAPPAN,S/O.KOCHUKUTTI,THOTTIYIL HOUSE,
KALIYAR KARA,VANNAPPURAM VILLAGE (DEAD)
685582.**
- 2. THE ORIENTAL INSURANCE CO.LTD.
REPRESENTED BY THE BRANCH MANAGER,
THODUPUZHA-685584.**
- 3. VALSA,W/O.LATE RAJAPPAN,THOTTIYIL HOUSE,
KALIYAR KARA,VANAPPURAM VILLAGE-685582.**

R2 BY ADV.SRI.TITUS MANI

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

P.B.SURESH KUMAR, J.

M.A.C.A.No.2051 of 2011.

Dated this the 8th day of April, 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 heavy vehicle driver. He was aged 35 years at the time of accident. The accident took place on 4.7.2005. 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.46,500/- 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.

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

4. The Tribunal found that the claimant sustained compression fracture of the 12th thoracic vertebra in the accident. Ext.A2 is the copy of the wound certificate produced by the claimant before the Tribunal. Ext.A5 is the medical certificate issued to the claimant from Chazhikattu Hospital, Thodupuzha. Ext.A10 is the disability certificate issued to the claimant by the Medical Board attached to the Taluk Head Quarters Hospital, Thodupuzha, assessing his permanent disability at 12%.

5. The Tribunal granted only a sum of Rs.10,000/- to the claimant towards loss of earnings for a period of four months, reckoning his monthly income at Rs.2,500/-. Since the accident took place in the year 2005, I am of the view that the monthly income of the claimant should have been reckoned by the Tribunal at least at Rs.4,500/-. The claimant is therefore entitled to a further sum of Rs.8,000/- towards compensation for loss of earnings.

Coming to the compensation payable to the claimant for continuing disability, though the disability of the claimant was assessed by the competent authority at 12%, the Tribunal granted only a sum of Rs.21,000/- on that head, reckoning the disability at 5%. It is seen from the award that the Tribunal did not satisfy the correctness of the disability assessed by the Medical Board. In **Raj Kumar v. Ajay Kumar** [2011(1) KLT 620 (SC)], the Apex Court held that the disability certificates issued by duly constituted Medical Boards shall be accepted subject to the evidence regarding the genuineness of such certificates. In this case there is no dispute as to the genuineness of Ext.A10 disability certificate. In the light of the said decision of the Apex Court, the claimant is entitled to compensation for continuing disability reckoning his monthly income at Rs.4,500/- and the disability at 12%, applying the multiplier '14'. The claimant is therefore entitled to a further sum of Rs.69,720/- on this head. Thus the claimant is entitled to a further sum of Rs.77,720/- towards compensation.

6. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7.5% 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.77,720/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum. It is clarified that the modified award can be executed by the claimant only after paying the balance court fee, if any, payable before the Tribunal.

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

Kvs/-

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PA TO JUDGE.