

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

MACA.No.2471 of 2013 ()

**AGAINST THE AWARD IN OP(MV)NO.1439/2009 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL, MANJERI DATED 31-10-2012**

APPELLANT :

**IBRAHIMKUTTY,
S/o BOERANKUTTY,
MUKKOLI HOUSE,
KEEZHAPARAMBA P.O,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.VENUGOPAL (1086/92)
SMT.T.J.MARIA GORETTI**

RESPONDENT(S) :

- 1. T.K.MOHAMMED ASHRAF,
S/O ABU, THEKKUMKOLTH HOUSE,
CHEEKODE P.O. MALAPPURAM DISTRICT.
PIN : 673 645.**
- 2. M.H.NIYAS, 279, KARYATH HOUSE,
KOZHAKOTTUR NORTH P.O., ARECODE,
MALAPPURAM DISTRICT - 673 639.**
- 3. THE ORIENTAL INSURANCE COMPANY Ltd
JASEELA COMPLEX, BYPASS JUNCTION
NILAMBUR ROAD, MANJERI,
MALAPPURAM DISTRICT - 676 121.**

R3 BY ADV. SRI.M.JACOB MURICKAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

VS

P.B.SURESH KUMAR, J

M.A.C.A.No.2471 of 2013

Dated this the 5th day of February, 2015

JUDGMENT

The claimant in an application for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted to him.

2. The claimant is a mason by profession. The accident took place on 8.5.2009. The claimant was aged 48 years at the time of accident. He sustained various injuries in the accident. A sum of Rs.1,00,000/- was claimed, in the circumstances, by way of compensation in the proceedings. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to a sum of Rs.29,373/- and accordingly, an award for the said amount was passed. Since the vehicle involved in the accident was covered by a valid insurance policy, the insurer of the vehicle was directed to satisfy the award. The claimant is aggrieved by the quantum of

compensation granted to him and hence this appeal.

3. Heard the learned counsel for the appellant/claimant and the learned counsel for the third respondent/insurer.

4. The Tribunal noticed from Ext.A2 wound certificate that the claimant sustained comminuted fracture and amputation of right little toe. As against a claim of Rs.18,000/- towards loss of earnings, the Tribunal granted a sum of Rs.10,500/- towards loss of earnings for a period of three months, reckoning the monthly income of the claimant at Rs.3,500/-. The Tribunal has also granted a sum of Rs.7,500/- towards compensation for the disability sustained by the claimant. No amount is seen granted towards extra-nourishment. Likewise, no amount is seen granted towards compensation for the loss of amenities and enjoyments in life.

5. According to me, the compensation granted by the Tribunal to the claimant towards loss of earnings is inadequate. The Apex Court in **Sanjay Kumar V. Ashok Kumar and another** [2014 ACJ 653] held that as far as persons who are working in the unauthorised sectors are

concerned and who are unable to produce proof of their income, their income shall be reckoned as Rs.4,500/- for the purpose of determining the compensation. The accident in the said case took place on 28.9.2005. In the instant case, the accident took place on 8.5.2009. In the circumstances, I am of the view that the monthly income of the claimant is liable to be reckoned at Rs.5,000/-. If the compensation for loss of earnings payable to the claimant is worked out applying his monthly income at Rs.5,000/-, he has to be granted a further sum of Rs.4,500/- towards loss of earnings. The claimant is also entitled to some amount by way of extra nourishment. His claim on that head was only Rs.1000/- and I am of the view that he is entitled to the said amount towards compensation on that head. It is beyond dispute that the claimant sustained amputation of his right little toe. For the said disability, the Tribunal had granted only a sum of Rs.7,500/- as compensation. According to me, the claimant is entitled to a further sum of Rs.7,500/- towards compensation on that head. As indicated earlier, no compensation is granted for the loss of amenities and

enjoyments in life. In the nature of injuries sustained by the claimant, he is entitled to some amount by way of compensation for loss of amenities and enjoyment in life, which I fix at Rs.5,000/-. Thus the claimant is entitled to an additional compensation of Rs.18,000/-.

In the result, the appeal is allowed in part and the compensation granted to the claimant is modified by granting to the further sum of Rs.18,000/- by way of compensation to the claimant. Needless to say, the claimant is entitled to interest also for the enhanced compensation granted at the same rate at which the interest was granted by the Tribunal for the compensation awarded.

Sd/-
P.B.SURESH KUMAR
JUDGE

/TRUE COPY/

PA TO JUDGE

VS