

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

MACA.No. 2108 of 2011

**AGAINST THE AWARD IN OP(MV) 1310/2006 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL, KOLLAM DATED 31-03-2010**

APPELLANTS/PETITIONERS:

- 1. SHAHIDA BEEVI
D/O. RAMLATH BEEVI, ANSHAD MANZIL, THAZHATHU CHERRI
MEENADU.**
- 2. ANWARSHAH (MINOR)
S/O. SHAHIDA BEEVI, ANSHAD MANZIL, THAZHATHU CHERRI
MEENADU.**

BY ADV. SRI.PRATHEESH.P

RESPONDENT(S)/2ND RESPONDENT:

**THE NATIONAL INSURANCE CO. LTD.
PARAMESWAR BUILDING, KOLLAM-691 001.**

**BY ADVS. SRI.RAJAN P.KALIYATH
SRI.LAL GEORGE
SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

P.B.SURESHKUMAR, J.

M.A.C.A.No.2108 OF 2011

Dated this the 20th day of February, 2015

JUDGMENT

The claimant in an original 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 was a boy aged 9 years at the time of the accident. The accident took place on 23.4.2006. A sum of Rs.1,00,000/- was claimed in the original petition by way of compensation for the injuries sustained by the claimant. The Tribunal though found that the claimant is entitled to a sum of Rs.31,500/- by way of compensation, granted the award only for 80% of the said amount holding that the claimant had also contributed to the accident to the extent of 20%. 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. It is seen that the Tribunal had arrived at the finding that the claimant also contributed to the accident to the extent of 20% solely on the ground that there is a statement in Ext.A6 wound certificate that the accident occurred when the claimant was crossing the road. There is no other material on record to indicate that the claimant was negligent in any manner in causing the accident. Merely for the reason that the accident took place when the claimant was crossing the road, it cannot be inferred that the claimant was also negligent. This view taken by the Tribunal cannot, therefore, be accepted.

5. It is beyond dispute that the claimant sustained fracture of both bones of his left leg in the accident and he was hospitalised for four days. The Tribunal has granted only a sum of Rs.10,000/- to the claimant towards pain and sufferings. According to me, considering the age of the claimant and the injuries sustained by him, he is entitled to a further sum of Rs.5,000/- towards compensation on that head.

In the result, the appeal is allowed in part. The finding of the Tribunal that the claimant had also contributed to the accident to the extent of 20% is vacated and the award is modified permitting the

claimant to recover a sum of Rs.36,500/- from the respondent with interest at the rate of 9% per annum from 15.12.2006.

jes

Sd/-
P.B.SURESHKUMAR, JUDGE