IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

MACA.No. 840 of 2010

O.P.(MV)NO.968/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA

APPELLANT(S)/APPLICANT :

SAJEEV, S/O.NARAYANAN, AGED 46 YEARS,
RESIDING AT PUTHENPURAYIL HOUSE, NELLADU KARA,
MAZHUVANNOOR VILLAGE, MUVATTUPUZHA.

BY ADVS.SRI.GEO PAUL
SRI.SANU MATHEW
SRI.C.R.PRAMOD
SRI.S.ASHOK KUMAR.
SRI.NOEL JOSEPH
SRI.M.B.SANDEEP
SRI.ANISH MUVATTUPUZHA
SRI.K.V.REJANISH
SMT.RAZEENA P.T.

RESPONDENT(S)/RESPONDENTS:
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1. JAYACHANDRA MARAR, CHALIL PUTHENPURA
   HOUSE, VARAPPETTY P.O., KOTHAMANGALAM,
   NOW RESIDING AT CHALAYIL MARATHU NELLADU.

2. ORIENTAL INSURANCE CO.LTD.,
   BRANCH OFFICE, THODUPUZHA.

R2 BY ADV. SRI.V.P.K.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

P.B.SURESH KUMAR, J.

M.A.C.A.No.840 of 2010

Dated this the 15th day of July, 2015

JUDGMENT

The claimant in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The claimant is an electrician. He was aged 40 years at the time of the accident. The accident took place on 2.7.2004. The case of the claimant before the Tribunal was that he was riding on the pillion of the motor cycle owned and driven by the first respondent at the time of the accident and the accident occurred on account of the overturning of the said vehicle. The second respondent, the insurer of the vehicle contested the claim petition, contending among others, that the policy of insurance issued by them for the vehicle does not cover the risk of the pillion rider. The Tribunal found that the accident occurred

on account of the negligence of the claimant himself and consequently dismissed the claim petition. The question as to whether the policy issued by the second respondent for the vehicle covers the risk of the pillion rider was not considered in the light of the said finding. The claimant is aggrieved by the said decision of the Tribunal and hence this appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the second respondent.

4. The vehicle involved in the accident was covered by a package policy issued by the second respondent. The fact that the said policy covers the risk of the claimant who was riding on the pillion of the vehicle is not disputed before me, in the light of the decision of this Court in **New India Assurance Co. Ltd. vs. Hydrose** [2008 (3) KLT 778].

5. Ext. A5 is the wound certificate produced by the claimant before the Tribunal. It is seen from Ext.A5 that the claimant suffered fracture of right ulna. The contention raised by the second respondent before the Tribunal was that the claimant had earlier suffered fracture of his right

ulna about two months before the accident and as such, he was not expected to ride on the pillion of a motor cycle until the said injury is completely healed. As such, according to the second respondent, an inference of negligence shall be made against the claimant who has undertaken such a ride. It seems that the said contention of the second respondent was accepted by the Tribunal.

6. Ext.A1 is the First Information Report in the crime registered in connection with the accident. Ext.A4 is the final report in the said crime. The Tribunal found from Ext.A4 that the police after due investigation came to the conclusion that the accident occurred on account of the negligence of the first respondent. In the light of the said documents, the fact that the accident occurred on account of the negligence of the first respondent cannot be disputed. True, the conduct of the claimant in riding on the pillion of the motor cycle within two months after he sustained the fracture of his right ulna cannot be accepted as a prudent conduct. That does not mean that he is not entitled to compensation for the injuries sustained by him in the

accident when it is found that the accident occurred on account of the negligence of the first respondent. At the most, the fact that the claimant had sustained the very same injury about two months prior to the accident is only a fact to be kept in mind by the Tribunal while determining the quantum of compensation payable to the claimant.

7. Coming to the quantum of compensation, the total claim was limited to Rs.40,000/-. Ext.A8 treatment certificate indicates that the claimant had undergone inpatient treatment for seven days. Likewise, the claimant had also produced bills and vouchers evidencing expenditure of Rs.7,293/- towards treatment. In the light of the documents produced by the claimant and having regard to the injuries sustained by the claimant, I am of the view that the compensation payable to the claimant can be fixed as follows :

Head of Claim	***Amount fixed***
Transportation	500/-
Damage to clothing	500/-

Head of Claim	***Amount fixed***
Extra nourishment	2000/-
Bystander expenses	1400/-
Treatment expenses	7300/-
Pain and sufferings	10000/-
Loss of amenities	5000/-
Total	**26,700/-**

Thus, the claimant is entitled to a sum of Rs.26,700/- towards compensation.

In the result, the appeal is allowed in part and an award is passed permitting the claimant to recover a sum of Rs.26,700/- from the second respondent with interest at the rate of 9% per annum from the date of claim petition till the date of payment. It is made clear that the claimant will not be entitled to interest for the period of delay in filing the appeal, viz., 440 days as ordered in C.M.Application No.1083 of 2010.

P.B.SURESH KUMAR, JUDGE.

smm