IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

MACA.No. 967 of 2010

AGAINST THE AWARD IN OPMV 286/2004 of MACT, ALAPPUZHA DATED 23-07-2009

APPELLANT(S)/PETITIONER:

ANTONY,
MANAKKODAMPARAMBU, ARTHUNKAL.P.O, CHERTHALA.

BY ADV. SRI.T.B.SARASAN

RESPONDENT(S)/RESPONDENT:
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1. JOHN BRITTO, S/O. FRANCIS,
PULIKKAL HOUSE, ARTHUNKAL P.O, CHERTHALA.

2. E.C.BAIJU, ERESSERIL HOUSE,
MARARIKULAM NORTH.P.O, CHERTHALA.

3. THE UNITED INDIA INSURANCE CO.LTD.,
REPRESENTED BY ITS BRANCH MANAGER, CHERTHALA.

R3 BY ADV. SMT.P.K.SANTHAMMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 08-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.

M.A.C.A. No.967 of 2010

Dated this the 8th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The award passed by the Tribunal in the concerned claim petition preferred in connection with a road traffic accident occurred on 17/2/2003, fixing the total compensation payable as ₹68,000/-, to be satisfied with interest at the rate of 7.5% per annum, is stated as inadequate and sought to be enhanced in the appeal preferred by the appellant/claimant.

2. The accident occurred on the date aforesaid, when the appellant was proceeding on a bicycle along the Champakadu - Perumpara road. When he reached

the place of occurrence, the motorcycle bearing Registration No.KL-4/K-3571 ridden by the 1st respondent, owned by the 2nd respondent and insured by the 3rd respondent, came in a rash and negligent manner and knocked him down causing serious injuries. After discharge from the hospital, the appellant approached the Tribunal, for compensation under various heads.

3. The 1st respondent, rider of the motorcycle, did not choose to pursue the matter as the counsel filed a 'relinquishment memo'. The 2nd respondent-owner of the motorcycle also did not choose to contest the matter and was declared ex parte. The claim was resisted by the Insurance Company raising various grounds, however, admitting the policy. No oral evidence was adduced by either side and the only evidence consists of Exts.A1 to A8 and Ext.C1 disability certificate issued by the Medical Board certifying the permanent disability as 10%. According to the appellant, he was working in a saw mill and his

monthly income was certified as ₹7,500/- vide Ext.A7 certificate issued by the Proprietor of the saw mill. But, no further steps were taken by the appellant to establish the facts and figures by causing the employer to be examined or by mounting the box by himself so as to be subjected to cross-examination by the other side. In such circumstances, holding that the income was not proved, the Tribunal reckoned only a sum of ₹2,000/-as the notional monthly income and awarded compensation under various heads, which forms the subject matter of challenge in this appeal.

4. Heard the learned counsel for the appellant as well as the learned counsel appearing for the Insurance Company.

5. Notice to the 1st respondent has already dispensed with by this Court on 17/6/2015, when the application to condone the delay was considered, subsequently, leading to the order dated 22/6/2015 condoning the delay of 53 days. This Court does not

find it necessary to issue notice to the 1st and 2nd respondents as the policy coverage is admitted by the 3rd respondent/Insurance Company and accordingly, notice to the 1st and 2nd respondents stands dispensed with.

6. Coming to the quantum of compensation awarded, the main dispute is with regard to the salary reckoned by the Tribunal and the amount awarded under the relevant heads. It is true that the appellant did not mount the box to depose his actual monthly income and to be subjected to cross-examination by the Insurer; nor did he pursue any step to examine the author of the certificate/employer who issued Ext.A7 certificate. No other evidence is available before the Tribunal with regard to the occupation or income. However, the fact remains that the appellant/claimant was an able bodied person of 48 years who was maintaining his family by virtue of the income derived by him from the employment. The accident was in February, 2003 and considering

the totality of the facts and circumstances, this Court finds that the notional income reckoned by the Tribunal as ₹2,000/- per month is on the lower level and according to us, the Tribunal should have reckoned the same as ₹4,000/- per month; even in the absence of any positive evidence in this regard. We reckon the same accordingly. On re-working the compensation payable, it is seen that the amounts awarded by the Tribunal require some variation. The injuries sustained by the appellant, as discussed by the Tribunal in paragraph-8 of the impugned award, are in the following terms:

> "Pain and swelling lower part of right thigh,
>
> lacerated wound right knee joint,
>
> lacerated wound medial mallelous right and
>
> compound fracture right femur."

The amounts awarded by the Tribunal under different heads are as given below:

Compensation for loss of earning	-	₹12,000/-
Cost of medicine and treatment charges	-	6,200/-

Transportation charges	-	2,000/-
Bystander's expenses	-	₹2,000/-
Extra nourishment	-	300/-
Damage to clothing	-	300/-
Compensation for pain and suffering	-	12,000/-
Compensation for permanent disability and loss of earning power	-	31,200/-
Compensation for loss of amenities	-	2,000/-
Total	-	68,000/-

The injury sustained by the appellant involving compound fracture of right femur is, of course, a serious one and it can be safely concluded that he was not in a position to do the same work for a period of six months. The Tribunal reckoned only six months towards loss of earning and awarded a sum of ₹12,000/-. On re-working the compensation based on the enhanced monthly salary fixed by this Court, a further sum of ₹12,000/- is payable under this head. Considering the nature and extent of injuries and the ordeal undergone by the appellant, a further sum of

₹1,000/- is payable towards bystander's expenses. So also, it is necessary to enhance the cost of extra nourishment and we add a further sum of ₹700/- under this head. The compensation awarded by the Tribunal for pain and suffering requires to be enhanced by a further sum of ₹3,000/-, over and above ₹12,000/- awarded by the Tribunal. The loss of amenities has to be compensated. Only an extent of ₹2,000/- is awarded, which is much on the lower side and we find that the appellant is entitled to get a further sum of ₹13,000/- under this head. On re-working the compensation towards permanent disability, the amount payable is 4000x12x13x10/100 which comes to ₹62,400/-. After giving credit to the amount of ₹31,200/- awarded by the Tribunal towards permanent disability, the balance payable is ₹31,200/-. Therefore, the total balance compensation payable is ₹60,900/- The said amount shall be satisfied with interest at the rate of 9% per annum from the date of filing the claim petition before the Tribunal i.e., 17/3/2004 till the date of deposit. Since the policy is admitted, the due amount shall be deposited by the Insurance Company before the Tribunal within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge