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 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 1361 of 2009 ( )

AGAINST THE AWARD IN OPMV 1098/2004 of M.A.C.T., MANJERI DATED 22-09-2008

APPELLANT(S)/PETITIONER:

A.HASSAN, AGED 45 YEARS,S/O. MOHAMMED,
ALIYATHODI HOUSE, MANJERI P.O.,
MALAPPURAM DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.P.VENUGOPAL (1086/92)

RESPONDENT(S)/RESPONDENTS:
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1. C.A.ASHRAF S/O. ABDUL ASEEZ,
CHEMBATHETHIL HOUSE, P.O. KUMARANALLUR,
VADAKKANCHERI, THRISSUR DISTRICT.

2. K.A.PARAMESWARAN,KADAMBOTTIL HOUSE,
MANKARA P.O. VADAKKANCHERI, THRISSUR DISTRICT.

3. NATIONAL INSURANCE CO.LTD.,
BRANCH OFFICE, THRISSUR.

R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A. No.1361 of 2009

Dated this the 29th day of September, 2015

<u>JUDGMENT</u>

<u>Ramachandra Menon, J.</u>

The injuries sustained by the appellant in an accident occurred on 6/8/2003 were sought to be compensated by filing a claim petition. In fact, the appellant herein was travelling on the motorcycle bearing Registration No.KL-11/A-5203 as a pillion rider and when the vehicle reached the place of occurrence, the motorcycle was knocked down by an autorikshaw bearing Registration No.KL-10/B-9649 driven by the 1st respondent, owned by the 2nd respondent and insured by the 3rd respondent/Insurance company; whereby serious injuries involving fracture to the right humerus were caused to the appellant. This led to the claim petition filed before the Tribunal.

2. The owner and driver of the autorikshaw did not choose to contest the matter and they were set ex parte. The 3rd respondent/Insurance Company filed a written statement admitting the policy, however, disputing the facts and figures with regard to the negligence and quantum. No oral evidence was adduced by either side. The only evidence consists of the police/medical records produced as Exts.A1 to A4/A5 series and A6 series.

3. On appreciation of the evidence, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the autorikshaw and proceeded to award compensation accordingly. The claim of the appellant was that he was doing business in footwear with a monthly income of ₹10,000/-. But, no evidence was adduced, either oral or documentary, in this regard and hence the Tribunal reckoned only a sum of ₹2,500/- as the

monthly income of the appellant to work out the loss of earnings for three months. The injuries sustained by the appellant are comminuted fracture to right humerus with cartilage injury, as put forward by the appellant and there was hospitalisation for a spell of 8 days incurring a medical expense to an extent of ₹22,050/- as awarded by the Tribunal. The amounts awarded by the Tribunal under various heads are as given below:

Transportation to the hospital	-	₹ 500.00
Damage to the clothing	-	250.00
Extra-nourishment and bystander's expenses	-	800.00
For reviews (5 times)	-	500.00
Pain and suffering	-	10,000.00
Loss of income for three months @ ₹2,500/- p.m.	-	7,500.00
Medical Bills	-	22,050.00
For after effect of their injury	-	6,000.00
For future treatment	-	3,000.00
Total	-	50,600.00

4. The stand taken by the Insurance Company that there was violation of the statutory/policy conditions in so far as the 1st respondent was not

having a valid driving licence at the relevant time was considered and held against the Insurance Company to the effect that no evidence was adduced in this regard. Accordingly, the total compensation of ₹50,600/- awarded by the Tribunal was ordered to be satisfied with interest at the rate of 7% per annum directing the Insurance Company to honour the same.

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

6. The learned counsel for the appellant submits that, despite producing the disability certificate marked as Ext.A3 issued by the District Hospital, Manjeri, the same was not accepted and acted upon by the Tribunal. Admittedly, the original of the disability certificate was never produced and the proclaimed disability was never attempted to be proved by examining the Doctor or even by deposing the version of the claimant, who virtually chose to remain behind the curtain. It was in the said

circumstance, that the Tribunal hesitated to place any reliance upon Ext.A3, more so when it was not the original of the disability certificate. No steps were taken by the appellant to cause himself to be examined by a Medical Board by filing necessary proceedings either before the Tribunal or even before this Court, despite the fact that the appeal itself is pending for more than six years. However, considering the available materials on record, this Court finds that the compensation awarded by the Tribunal under some heads require modification.

7. The accident was occurred on 6/8/2003. Despite the fact that the appellant was aged 40 years, maintaining a family of his own, allegedly doing footwear business, only a sum of ₹2,500/- was taken as his monthly income. Even though no evidence was adduced, it could be reasonably presumed that fixation of the monthly income is on the lower side and we find it fit and proper to have the same raised to ₹3,500/- per month. On re-working the 'loss of

earning' for the period of three months, comes to ₹10,500/-, thus, resulting in a balance of ₹3,000/- to be paid to the appellant. Pain and suffering have been compensated by the Tribunal only to an extent of ₹10,000/-. We enhance the same to ₹20,000/-, thus, resulting in a balance of ₹10,000/-. The Tribunal has awarded a sum of ₹6,000/- towards after effect of the injury, which presumably is towards the loss of amenities and enjoyment in life. This obviously is on the lower side and the same has to be enhanced to ₹20,000/-, thus resulting in a balance of ₹14,000/-. Since the existence of disability is not proved, we do not intend to effect any modification in this regard. The total balance compensation payable comes to ₹27,000/-, which shall be satisfied with interest at the rate of 9% per annum by the Insurance Company, from the date of the petition, till the date of satisfaction. Since the policy is admitted, the 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