

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

MACA.No. 1061 of 2010 ()

AGAINST THE AWARD IN OPMV 1057/2003 of MACT, PATHANAMTHITTA DATED 07-11-
2009

APPELLANT(S)/PETITIONER:

P.K.KURIAKOSE @ BABY, S/O P.K. SCARIAH
PLAMTHOTTATHIL, ERAVIPEROOR, PATHANAMTHITTA DIST.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S):

1. PRAVEENA BINESH, PADINJARECHIRA,
KAINAKARI EAST.P.O., ALAPPUZHA.

2. SHAJO JOSEPH, S/O. VARKEY JOSEPH,
KOZHUMULLERATHU, VETTIMUGAL.P.O., ETTUMANOOR
KOTTAYAM.

3. M/S. ORIENTAL INSURANCE CO. LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER, THIRUVALLA.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

SHAJI P. CHALY, JJ.

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M.A.C.A. No. 1061 of 2010

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Dated, this the 1st day of December, 2015

JUDGMENT

Ramachandra Menon, J.

Claimant in O.P.(M.V) No. 1057 of 2003 before the Motor Accidents Claims Tribunal, Pathanamthitta is the appellant herein. The grievance is with regard to the inadequacy of compensation awarded pursuant to a road traffic accident occurred on 08.03.2003.

2. The sequence of events reveals that the appellant was travelling as pillion rider on the scooter bearing No. KRA 4154. While so, when he reached at the place of occurrence, a maruthi car bearing No. **KL 4 L 2188** owned, driven and insured by the respondents 1 to 3 respectively dashed against the scooter causing serious injuries to the appellant which was sought to be compensated by filing claim petition before the Tribunal.

3. The first and second respondents did not choose to contest the matter and were set exparte. Claim was sought to be resisted by

the Insurance Company on general grounds. Based on the relevant materials on record, the Tribunal found that the accident was only because of the negligence on the part of the driver of the car and proceeded to fix the compensation accordingly.

4. Case of the appellant is that he was working as Special Grade Panchayat Secretary and the income was sought to be proved by submitting Ext. A10 salary certificate. Though it was contended in the claim petition that he was having a monthly salary of Rs.6000/-, Ext. A10 reveals that the appellant was having a monthly income of Rs.10766/-. It was accordingly, that Rs.10,000/- was reckoned by the Tribunal for awarding the compensation under the head of loss of earning for four months, considering the nature and extent of injury.

5. Injuries sustained by the appellant, as disclosed from Ext. A8, are in the following terms :

- "(1) Clinically fracture shaft of femur right.
- (2) Open fracture tibia and fibula right.
- (3) 15 c.m. long degloving injury of right leg and foot.
- (4) 15 c.m. X 10 c.m. lacerated wound right foot medial aspect.
- (5) Punctured wound 4 c.m. X 4 c.m. Of right leg proximal 1/3 anterior aspect.

The appellant remained to be an inpatient from 08.03.2003 till 18.03.2003. The injuries noted in Ext. A9 discharge certificate are in the following terms ;

- "1. Type III C, compound comminuted fracture both bones right leg.
2. Comminuted fracture upper 3rd tibia right.
3. Fracture shaft of femur right.

6. By virtue of the injuries caused to the right leg of the appellant, it came to be amputated above the knee level. Ext. A13 is the copy of the disability certificate, which certifies the extent of disability as 50%. At the time of the accident, the appellant was 54 years of age and he was to retire on attaining the age of superannuation on crossing the age of 56 years. The Tribunal observed that no material was produced as to loss of income in any manner because of the injuries sustained, by virtue of the job being of permanent nature and the appellant retired from service accordingly. But considering the prospects for having obtained some or other employment after retirement, the Tribunal reckoned monthly income of Rs.2500/- from the date of retirement and adopting the multiplier of 8, awarded a sum of Rs.1,20,000/- under the head of permanent disability. The amounts awarded under

other heads are in the following terms:

Pain and sufferings	: Rs.50000/-
Loss of amenities	: Rs.50000/-
Loss of earnings	: Rs.40000/-
Medical and treatment expenses	: Rs.60050/-
Bystander expenses	: Rs. 2500/-
Transportation expenses and damage to clothing	: Rs. 3000/-
Future medical expenses	: Rs.25000/-

Thus, the Tribunal granted a total compensation of Rs.3,50,550/- which was directed to be satisfied by the Insurance Company with interest @ 7.5% p.a. from the date of filing the claim petition. This in turn is sought to be enhanced by preferring this appeal.

7. Heard the learned counsel for the appellant as well as the learned counsel for the Insurance Company.

8. On going through the materials on record and after hearing both the sides, we find that the post retirement income reckoned by the Tribunal on a notional basis as Rs.2500/- is on the lower side, more so, because of the nature of employment of the appellant and the experience gathered by him, by virtue of which

far more extent could have been reasonably expected by the appellant. We find it proper to refix the same as Rs.4000/- to work out the compensation for disability. On reworking the compensation under the head 'permanent disability', it will come to Rs.1,92,000/- [Rs.4000 x 12 x 8 x 50/100]. After giving credit to the amount of Rs.1,20,000/- already granted by the Tribunal, it will come to **Rs.72,000/-**. It is seen that the Tribunal has adequately compensated other heads viz. Rs.50000/- towards pain and sufferings; Rs.40000/- towards loss of earnings [Rs.10000/- for four months]; Rs. 60,050/- towards medical and treatment expenses including the amount spent for purchase of artificial limb and under such other heads. It is also true that Rs.50,000/- has been awarded towards the loss of amenities. But considering the fact that loss of right limb above the knee is an adverse circumstances, which is to remain in the entire life span and the appellant has to travel a long way ahead, we grant a further sum of **Rs.25000/-** towards the loss of amenities and enjoyment in life. Thus, the balance compensation payable will come to **Rs.97,000/-**, which shall be satisfied with interest @ 9% p.a. from the date of filing the petition, till satisfaction. Since the policy

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stands admitted, we direct the Insurance Company to deposit the amount, at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment.

The appeal stands allowed to the said extent. No cost.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**SHAJI P. CHALY,
JUDGE**

kmd

/True copy/

P.A. To Judge