

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. 1088 of 2010 ()

AGAINST THE AWARD IN OPMV 986/2005 of M.A.C.T., NEYYATTINKARA DATED 30-10-2009

APPELLANT(S)/2ND RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LTD
NEYYATTINKARA NOW REPRESENTD BY ITS ASSISTANT
MANAGER, REGIONAL OFFICE, METRO PALACE
KOCHI-18.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENT(S)/PETITIONER:

NESAMONY, S/O LASAR NADAR, ELANJIMOODU ROADARIKATHU VEEDU,
PANNIYODE, VEERANAKAVU VILLAGE
THIRUVANANTHAPURAM DISTRICT REP; BY HIS NEXT FRIEND
LILLI, D/O.KUNJI, ELANJIMOODU ROADARIKATHU VEEDU
PANNIYODE, VEERANAKAVAU VILLAGE, THIRUVANANTHAPURAM DISTRICT

BY ADV. SRI.M.R.SARIN

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. 1088 of 2010

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Dated, this the 1st day of December, 2015

JUDGMENT

Ramachandra Menon, J.

Granting of total compensation of Rs. 3,55,500/- with interest @ 7.5% p.a. from the date of petition in respect of the serious injuries sustained by the claimant with 50% permanent disability, who is virtually not in a position to move about because of spinal injury, is sought to be challenged by the Insurance Company stating that the quantum is exorbitant.

2. The respondent herein, who was a physically challenged person, being deaf and dumb, was proceeding along the road on 07.12.2004. While so, the motorcycle bearing No. KL 16 A 2803 insured with the appellant herein knocked the claimant down, causing serious injuries involving fracture to the neck and such other consequences. The spinal injury virtually affected all the four limbs of the claimant and the treatment was availed initially in the Kanyakumari District Hospital, Nagercoil, Tamil Nadu and

subsequently, in the Medical College Hospital, Thiruvananthapuram, besides the treatment availed from the Ayurveda Medical College Hospital, Thiruvananthapuram. The loss was sought to be compensated by filing a claim petition before the Tribunal.

3. Owner/rider of the scooter did not choose to contest the matter and he was set exparte. The claim was sought to be resisted by the Insurance Company on general grounds.

4. Evidence adduced before the Tribunal consists of Exts. A1 to A14 marked from the part of the claimant, while the insurance company sought to produce copy of the policy as Ext. B1. On appraisal of the evidence, the Tribunal held that accident was because of the negligence on the part of the owner cum rider of the bike. Considering the nature of injuries and adverse circumstances resulted, as evident from the materials on record, the Tribunal awarded compensation under different heads; total of which comes to Rs.355500/- as aforesaid, mulcting the liability upon the shoulders of the Insurance Company, which is attempted to be scaled down in this appeal.

5. Heard Sri. Mathews Jacob, the learned senior counsel appearing for the Insurance Company and Sri. M.R. Sarin, the learned counsel appearing for the respondent/claimant.

6. The learned senior counsel for the Insurance Company submits that, though it was contended that the accident was occurred on 07.12.2004, the matter was never reported to the police then and there, till 04.02.2005, when it was caused to be acted upon, on the basis of a private complaint preferred in this regard. No wound certificate was produced and there is no reference to the road traffic accident in Ext. A11 discharge certificate issued from the hospital. Merely with reference to the fracture to back of the neck, the permanent disability has been worked out to be 50% and compensation has been awarded accordingly, which is sought to be interfered. The learned senior counsel also points out that the claimant was aged above 42 years and as such, the appropriate multiplier as per the decision rendered by the Apex Court in **Sarla Verma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, is '14' and not '15', which hence requires interference to an appropriate extent.

7. The learned counsel for the respondent/claimant submits that the claimant was a general worker and that he was earning a monthly income of Rs. 3000/-. It is stated that the amounts awarded by the Tribunal under different heads are not adequate enough considering the plight of the respondent herein, who is

virtually not in a position to move about. The learned counsel submits that, though the respondent was brought to the Tribunal in connection with the proceedings, he had to keep himself in the autorikshaw, as he was totally unable to be taken to the court hall.

8. With regard to the contentions raised by the appellant insurance company as to the delay in reporting the matter to the police and absence of any reference to the road traffic accident in the medical records, it is seen that the position has been discussed by the Tribunal in paragraph 7 of the Award, which reveals that on the very same date of the accident i.e. 07.12.2004, the respondent/claimant was taken to the Kanyakumari District Hospital as revealed from Ext. A5(a) and he was remaining there till the date of discharge on 20.02.2005. The said certificate also reveals that the claimant was admitted with '**spine injury**' and weakness to 4 limbs on 07.12.2004 which was the date of the accident. This was followed by subsequent treatment availed from the Medical College Hospital, Thiruvananthapuram and the Government Ayurveda Hospital, Thiruvananthapuram as revealed from the relevant records/documents produced. It was after the initial ordeal, that the party could prefer a complaint before the police, which led to Ext. A14 FIR in respect of the Crime No. 67 of

2005 of Kattakkada police station and the subsequent follow-up proceedings. This being the position, the delay in causing the matter to be brought to the notice of the police does not and cannot bar the way of the respondent/claimant in proceeding with the matter before the Tribunal to get the compensation.

9. With regard to the submission made by the learned senior counsel that, there is no evidence as to the extent of disability or that the respondent/claimant was lying bed-ridden and he cannot move about, it is to be noted that, no such disability to the respondent was there till the date of the accident i.e. on 07.12.2014. This is for the obvious reason, that the accident was occurred when he was proceeding along the road. It also remains a fact that, though he was taken to the Tribunal, he could not be taken to the Court hall because of the physical condition. Even otherwise, in the cause title of the memorandum of appeal and that of the Award, the claimant is represented by his wife, being the next friend. This by itself is an indicator, that the respondent/claimant is not in a position to pursue the day-to-day activities of his own. In the said circumstances, fixation of disability as 50% is not liable to be deprecated under any circumstances.

10. The amounts awarded by the Tribunal under various heads are as given below :

Towards disability	: Rs.25000/-
Damage to cloth	: Rs. 500/-
Transportation expenses	: Rs.5000/-
Extra nourishment	: Rs. 5000/-
Bystander's expenses	: Rs.25000/-
Medical expenses	: Rs.10000/-
Future Medical expenses	: Rs.10000/-
Pain and sufferings	: Rs.25000/-
Loss of amenities	: Rs.25000/-
Permanent disability	: Rs.225000/-

There is some force in the submission made by the learned senior counsel for the appellant that the Tribunal has gone wrong in fixing the appropriate multiplier as '15', in place of '14' as made clear by the Apex Court in **Sarla Verma's** case. But the question is whether any interference should be made on this ground alone. This is for the reason that, despite quite serious injuries and the adverse circumstances resulted, virtually disabling the respondent/claimant to move about and to continue as almost bedridden, without any chance to eke out his living, the amounts

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awarded by the Tribunal under some other heads such as pain and sufferings, loss of amenities are possible to be reconsidered for enhancement. In other words, if at all there is any excess with regard to the disputed extent of multiplier by '1', it could be set off or adjusted against the inadequate extent under other relevant heads. Striking a balance, we find that no interference does require at the hands of this Court, more so when the respondent/claimant is admittedly a physically challenged person, being deaf and dumb, requiring support from all corners and the appellant Insurance Company also cannot run away from this social commitment.

Interference is declined and the appeal stands dismissed.

sd/-

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

sd/-

**SHAJI P. CHALY,
JUDGE**

kmd

/True copy/

P.A. to Judge