

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

MACA.No. 155 of 2008 ()

AGAINST THE AWARD IN OPMV 108/2001 of M.A.C.T.,PUNALUR DATED 18-07-2005

APPELLANT/PETITIONER IN OPMV:

ISSAC, S/O.VARGHESE, LAIJU BHAVAN,
KALLATTIL, NELLIPPALLY, VALACODE VILLAGE
PUNALUR.

BY ADV. SRI.R.ARUN RAJ

RESPONDENT(S)/RESPONDENTS IN OPMV:

*1. GEORGEKUTTY, S/O.YOHANNAN UNNUNNY,
JOY BHAVAN, CHEPAVALLY, KAYAMKULAM.

*2. VARGHESE BABY, S/O. BABY, KURANAN
PARAMBIL HOUSE, WARD NO.XVIII, KUKKAVALA JUNCTION
KAYAMKULAM.

3. M/S.NEW INDIA ASSURANCE CO. LTD.,
KAYAMKULAM BRANCH.

*4. NINAN GEORGE, PRO.PAN INDIA MEDICAL
SERVICE, PUNALUR.

5. M/S. ORIENTAL INSURANCE CO. LTD.,
PULIMOOTTIL BUILDINGS, PUNALUR.

(* R1, R2 and R4 are deleted from the party array, at the risk of
the appellant, as per order dated 31.07.2015 in I.A. No. 2525 of
2015)

R,R3 BY ADV. SMT.T.C.SOWMIAVATHY

R,R5 BY ADV. SRI.M.JACOB MURICKAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

BABU MATHEW P. JOSEPH, JJ.

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M.A.C.A No. 155 of 2008

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Dated, this the 31st day of July, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant sustained serious injuries in a motor accident that occurred on 23.04.1999 involving an ambulance driven by the appellant and a lorry driven by the first respondent, owned by the second respondent and insured with the third respondent. He has preferred a petition before the Motor Accidents Claims Tribunal, Punalur, claiming compensation on account of the injuries sustained by him in the motor accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the first respondent, driver of the lorry, and awarded a total compensation of Rs.63,646/- under various heads as follows :

Loss of earnings	:	Rs. 6,000/-
Expenses for transport	:	Rs. 1,500/-
Extra nourishment	:	Rs. 1,000/-
Damages to clothing	:	Rs. 400/-
Medical Expenses	:	Rs. 7,946/-
Bystander's expenses	:	Rs. 1,500/-
Pain and sufferings	:	Rs. 7,500/-
Permanent disability	:	Rs.37,800/-

The third respondent was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 3 and 5.

3. The appellant has sustained open knee injury with displaced fracture of medial tibial plateau (right), medial collateral ligament injury (right), patellar tendon injury (right) and multiple wounds over the forehead. He has undergone

long periods of inpatient as well as outpatient treatments. He was treated with fixation of fracture of medial tibial condyle with cancellous screws and fracture of the shaft of tibia with cortical screws. The appellant has produced Ext. A2 disability certificate showing that he has sustained permanent disability of 15 %. He has given oral evidence before the Tribunal. The Tribunal has adverted to the details of the injuries sustained, treatments undergone and disabilities being experienced by the appellant. The appellant was aged 40 at the time of accident. He was working as a driver at that time. In fact, he met with this accident sustaining serious injuries while he was driving an ambulance. It is in evidence that he is an ex-serviceman. He was a driver for 17 years in the defence service. There was a very fair chance for him to be absorbed in some reputed organization as a driver, if he had not met with this accident. There is evidence to show that he could not attend the interviews for selection as driver due to the accident. The doctor who examined the appellant on

14.10.2004 certified that the appellant was unable to drive vehicle owing to the injuries and the permanent disabilities sustained by him. Even though the doctor certified 15% permanent disability according to Mc Bride Scale, the learned Tribunal reckoned his permanent disability only as 7% for the purpose of awarding compensation. The Tribunal has quoted elaborately various disabilities being experienced by the appellant as a result of the injuries sustained. But, that did not reflect in the percentage of disability adopted by the Tribunal. In view of the serious nature of injuries suffered and the treatment undergone by the appellant and the disabilities explained, it is only reasonable to accept permanent disability of 15% certified by the doctor. The petitioner claimed that he was earning a monthly income of Rs. 5000/-. But, in the absence of reliable evidence, based on probabilities, we fix the monthly income of the appellant at Rs.3500/- during the relevant period. He was aged 40 at the time of accident. Therefore, a multiplier of 15 will be

appropriate in this case. Applying the said multiplier, the compensation for loss of earning power works out at Rs.94,500/- ($\text{Rs.}3500 \times 12 \times 15 \times 15 / 100$). The Tribunal has not awarded any amount towards compensation for loss of amenities. On the basis of the evidence available, it can be found that considerable loss of amenities being experienced by the appellant. On considering them, Rs.25,000/- is allowed under that head. The Tribunal awarded only a paltry sum of Rs.7500/- as compensation for pain and sufferings. But, considering the serious injuries and the long period of treatments, we enhance the same to Rs.25,000/-. We do not find any reason to interfere with the amounts awarded under other heads. Thus, the appellant is entitled to an additional amount of Rs.99,200/- [Rupees ninety nine thousand and two hundred only] as compensation over and above the amount awarded by the Tribunal. The said amount of Rs.99,200/- shall carry interest @ 9 % per annum from the date of filing of the claim petition till realization. The third

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respondent Insurance Company shall deposit the amount within 30 days from the date of receipt of a copy of this judgment.

The appeal is allowed in part as above.

Sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd