

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

MACA.No. 161 of 2008 ()

AGAINST THE AWARD IN OPMV 1709/2003 of M.A.C.T., KOTTAYAM
DATED 12-06-2007

APPELLANT/PETITIONER:

K.P.DAVID @ KUNJUMON,
KOLLAMPARAMBIL, VADAVATHOOR P.O., VIJAYAPURAM VILLAGE
KOTTAYAM.

BY ADVS.SRI.R.REJI
SRI.B.BIPIN

RESPONDENTS/RESPONDENTS:

1. SUNNY ABRAHAM @ SUNNY,
MANARCADU P.O., MANARCADU VILLAGE, KOTTAYAM.

2. SUSAN ABRAHAM,
KUNNEL HOUSE, MANARCADU P.O., KOTTAYAM.

3. THE ORIENTAL INSURANCE CO. LTD.,
KOTTAYAM.

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R.RAMACHANDRA MENON &
SUNIL THOMAS, JJ.**

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M.A.C.A.No.161 of 2008

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Dated this the 6th day of August, 2015

JUDGMENT

P.R.Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in O.P(M.V).No.1709 of 2003 in relation to the injuries sustained by the appellant in a road traffic accident occurred on 16.12.2002 is the subject matter of challenge in this appeal.

2. The appellant was driving an autorikshaw bearing No.KL5F-7126 on 16.12.2002. While so, a lorry bearing No.KL5A-5130 which was allegedly parked on the southern side of the road abruptly took a turn and hit against the front side of the autorikshaw causing serious injuries to the appellant/claimant because of rupture of the glass which pierced into the left eye of the claimant. The first respondent, driver of the vehicle and the second respondent, owner of the vehicle were set ex parte. The insurance policy was admitted by the third respondent/insurer. After completion of the evidence, the Tribunal awarded amounts under various heads, granting a total compensation of Rs.83,500/- which was ordered to be satisfied with interest @7% per annum, which is sought to be enhanced by filing this appeal.

3. Heard the learned counsel for the appellant as well as the learned standing counsel appearing for the insurance company. It is seen that there is a delay of 85 days in filing the appeal. Notice was ordered in the C.M.Application on 29.01.2008, but the service is not complete in respect of the first respondent, driver of the lorry. Since the policy stands admitted, this Court dispensed with notice to the first respondent and the matter was heard accordingly.

4. The injuries sustained by the appellant as discussed in paragraph 14 of the award are in the following terms:

“Ext.A3 copy of wound certificate seen prepared immediately after the accident mentions the injuries sustained by petitioner as multiple lacerated wounds on the front of forehead, root of nose and above eyelids.”

The adverse consequences resulted have been discussed by the Tribunal in the Award. The Tribunal awarded amounts under various heads as extracted below:

(i)	Transportation expenses	:	1,000/-
(ii)	Clothing	:	500/-
(iii)	Extra Nourishment & liquid food	:	3,000/-
(iv)	By stander expenses	:	3,000/-
(v)	Medical Bills	:	1,000/-
(vi)	loss of earning for four months (presumably @Rs.2,500/-)	:	10,000/-
(vii)	Pain and Suffering	:	25,000/-

(viii) Loss of Amenities	:	10,000/-
(ix) Permanent disability and loss of earning power	:	30,000/-

		Rs.83,500/-
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5. There is no dispute that the appellant sustained injuries when he was driving an autorikshaw and he has produced his driving license as Ext.A9. He was a man of 42 years and was maintaining his family. This being the position, we find that the monthly income reckoned by the Tribunal @2,500/- is on the lower side and find it necessary to have it enhanced to Rs.3,000/-. As a result of this, the loss of earning sustained by the appellant for about four months will come to Rs.12,000/-, thus, resulting in a balance of Rs.2,000/- as payable. The extent of disability certified by the Medical Board is 30%, which has been referred by the Tribunal in paragraph 14 of the Award. But how the amount has been quantified to reach the figure of 30,000/- in the case of disability is not discernible from the award. We effect the calculation as follows:

$$\frac{3,000 \times 12 \times 30}{100} \times 15 = \text{Rs.1,62,000/-}$$

After deducting Rs.30,000/-, the balance amount payable to the appellant under head of permanent disability comes to

Rs.1,32,000/-. The appellant was hospitalized on different spells, for a total of 32 days. Loss of amenities awarded by the Tribunal as Rs.10,000/- is on the lower side and we find it fit and proper to grant a further sum of Rs.15,000/- under this head.

In the above circumstances, the balance compensation payable to the appellant is Rs.1,32,000+Rs.15,000+Rs.2,000/- = Rs.1,49,000/- (Rupees One Lakh Fourty Nine Thounsand Only). The above compensation shall be paid with interest @9% per annum from the date of filing before the Tribunal till satisfaction. The insurance company shall satisfy the said amount within one month.

The appeal stands allowed to the above extent.

Sd/-

P.R.RAMACHANDRA MENON
Judge

Sd/-

SUNIL THOMAS
Judge

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