

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

MACA.No. 1721 of 2014 ()

AGAINST THE AWARD IN OPMV 696/2009 of II ADDL. MACT, KOZHIKODE DATED
06-05-2011

APPELLANT/PETITIONER:

GIREESHAN, AGED 40 YEARS
S/O. SUDHAKARAN, RESIDING AT NEETTUVVEETIL HOUSE
P.O., ELATHOOR, KOZHIKODE

BY ADVS.SRI.AVM.SALAHUDIN
SMT.A.D.DIVYA

RESPONDENT(S)/RESPONDENT:

ORIENTAL INSURANCE CO. LTD.
BRANCH OFFICE, SREENIDHI BUILDING, NARAYANA NAGAR
VATAKARA - 673 101.

R BY ADV. SRI.RAJESH THOMAS
SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 1721 of 2014

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Dated, this the 28th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a road traffic accident occurred on 03.04.2007 is the subject matter of challenge in this appeal.

2. The appellant was a pedestrian, who was proceeding along the road on the aforesaid date when the bus bearing No. **KL 11 T 135** came and hit against him causing serious injuries. He was taken to a hospital, where he availed treatment as inpatient for nearly six days. The injuries as disclosed from the records are compression fracture D8 vertebra and multiple injuries all over the body. Ext. A2 is the wound certificate and Ext. A4 is the discharge summary issued from the Medical College Hospital, Kozhikkode. Ext.C1 is the permanent disability certificate issued by the Medical Board certifying the extent of disability as 10%. The consequences

resulted because of the accident were sought to be compensated by filing claim petition. The matter was sought to be contested only by the Insurance Company. No statutory ground of defence as envisaged under Section 149 (2) is discernible and the dispute was only with regard to the alleged negligence on the part of the driver of the bus and the quantum of compensation payable. The evidence adduced before the Tribunal consists of documentary evidence of Exts. A1 to A5, Ext. C1 disability certificate and Ext. X1 case record/3rd party exhibit. After hearing both the sides, the Tribunal arrived at a finding that the accident was occurred only because of the negligence on the part of the driver of the bus and the liability was sought to be fixed accordingly.

3. The case of the appellant was that he was a fisherman by profession and was earning a monthly income of nearly Rs.6000/-. But no evidence was adduced from his side, at least by causing himself to be examined as witness, subject to cross examination by other side. The Tribunal reckoned Rs.3000/- as monthly income and worked out the compensation accordingly, adopting the multiplier '16'. Reckoning the certified disability as 10%, a sum of Rs.57,600/- was awarded under the head of permanent disability.

Based on the materials available on record, the Tribunal awarded a total compensation of Rs.82,600/- under various heads, which was directed to be satisfied with interest @ 7% p.a. from 26.05.2009 till the date of deposit. This is sought to be enhanced by filing the appeal.

4. Heard both the sides.

5. After going through the materials on record, this Court finds that the monthly income of the appellant was not substantiated by adducing any evidence. Considering the fact that the accident was occurred in the year 2007, the avocation of the claimant as 'fisherman', that his age was 38 years at the time of accident and such other relevant aspects, this Court finds that the income requires to be enhanced to Rs.4000/- and we adopt the same accordingly. However, with reference to the multiplier, the learned counsel for the Insurance Company submits that the proper multiplier which ought to have been reckoned by the Tribunal in the light of the law declared by the Apex Court in **Sarla Varma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** which has been affirmed in **Reshma Kumari and Ors. Vs. Madan Mohan and another [2013 (2) KLT 304 (SC)]**, it should be '15'

instead of '16'. We find considerable force in the said submission and we accept the same. The compensation awarded by the Tribunal under the relevant heads are in the following terms :

Sl. No	Head of Claim	Amount claimed (Rs.)	Amount awarded (Rs.)	Details
1	Transport to hospital	1000	750	
2	Extra nourishment	3000	1000	
3	Damage to clothing	1000	500	
4	Loss of earning	40000	6000	3000 x 2 months
5	Treatment expenses	25000	1000	
6	Bystander's expenses	Nil	750	150 x 5 days
7	Pain and sufferings	25000	12000	
8	Permanent disability	150000	57600	$3000 \times 12 \times 16 \times 10 / 100$
9	Loss of amenities	25000	3000	
	Total		82600	

(7% interest from 26.05.2009)

6. We find that only a period of 'two' months has been reckoned for considering the loss of earning, which is not at all correct and is much on the lower side, in view of the nature of injuries sustained by the appellant, involving compression fracture D8 vertebra and multiple injuries all over the body. This Court finds it fit and proper to reckon 'six' months' period for loss of earnings, and as such, compensation under the head 'loss of

earning' will come to Rs.4000 x 6 = 24000/-. After giving credit to Rs.6000/- already granted by the Tribunal, the balance compensation payable under the head of loss of earnings will come to **Rs. 18000/-**. Compensation payable in respect of permanent disability will come to Rs.4000 x 12 x 15 x 10/100 = 72000/- and the balance compensation payable under this head will come to **Rs.14400/** [Rs. 72000 – 57600]. It is seen that only a sum of Rs.12000/- has been awarded by the Tribunal under the head of pain and sufferings, which requires to be enhanced to Rs. 20000/-, thus the balance amount will come to **Rs.8000/-**. Similarly, only a meagre sum of Rs.3000/- has been awarded by the Tribunal under the head of loss of amenities and hence a sum of **Rs.17000/-** more is awarded under this head so as to make it to Rs.20000/-. Thus the total balance compensation payable under the relevant heads will come to **Rs. 57400/-**, which shall be satisfied with interest @ 9 % p.a. from the date of filing claim petition.

7. It is made clear that since the appeal has been filed with a delay of 1035 days, which stands condoned as per the order dated 11.12.2014 in C.M. Appln No. 1961 of 2014, the appellant

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will not be entitled to get interest for the period covered by delay.

Since the policy stands admitted by the Insurance Company, the due amount shall be deposited by the Company within one month from the date of receipt of a copy of this judgment.

The Appeal stands disposed of.

sd/-

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

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge