

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MACA.No. 169 of 2008 ()

AGAINST THE AWARD IN OPMV 560/1996 of II ADDL. MACT, KOZHIKODE
DATED 11-01-2007

APPELLANT/PETITIONER IN OPMV::

MOHAMMED RIJEESH ALI, AGED 27 YEARS,
S/O.N.ALIKOYA, RESIDING AT POTTAYIL HOUSE
VENGERI P.O., KANNADIKKAL, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS IN OPMV::

1. K.T.MUHAMMED, S/O.MAMMU, AGED 45 YEARS,
RESIDING AT KAVUNGUMTHOTTATHIL HOUSE, KAVUM MANNAM
KALPETTA VIA, WYNAD (OWNER AND
DRIVER OF THE JEEP NO.KLT 7943)
2. M/S.NEW INDIA ASSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, SILVER PLAZA BUILDING
INDIRA GANDHI ROAD, KOZHIKODE (INSURER OF THE
JEEP NO. KLT 7943)

R1 BY ADV. SRI.M.RAMESH CHANDER

R2 BY ADV. SRI.PMM.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

dsn/-

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.169 OF 2008

DATED THIS THE 9th DAY OF NOVEMBER, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellant is the claimant in OP(MV)No.560/96 on the file of the Second Additional Motor Accident Claims Tribunal, Kozhikode. The said claim was one filed under Section 166 of the Motor Vehicles Act claiming a compensation of ₹1,00,000/- for the injuries sustained by him in a motor accident which occurred on 12.8.1995 at about 6.30 PM, while he was travelling as a pillion rider in a motor cycle bearing registration No.KL-11/B-1288. When the motor cycle reached the place of accident, a jeep bearing registration No.KLT-7943 driven by the 1st respondent came in a rash and negligent manner and hit the motor cycle, as a result of which the appellant sustained serious injuries. The 1st respondent is the owner-cum-driver of the jeep and the 2nd respondent is the insurer.

2. On the side of the appellant Exts.A1 to A6 were marked. The disability certificate issued from the Medical College Hospital,

Kozhikode was marked as Ext.X1. No oral evidence was adduced by either side. After considering the materials on record, the Tribunal came to the conclusion that the accident occurred due to the negligence of the 1st respondent driver and the 2nd respondent being the insurer of the jeep is liable to compensate the appellant. The Tribunal awarded a total compensation of ₹1,07,300/- under different heads and directed the 2nd respondent insurer to pay the said amount together with interest at the rate of 7% per annum from the date of petition till payment. The inadequacy of the compensation awarded by the Tribunal is the subject matter in this appeal.

3. We heard arguments of the learned counsel for the appellant, learned counsel appearing for the 1st respondent and also the learned counsel for the 2nd respondent insurer.

4. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal under different heads represents a just and reasonable compensation.

5. The pleadings and the materials on record would show that at the time of accident the appellant was aged 17 years and

was a student at Viswabharathi College, Nadakkavu. The accident occurred on 12.8.1995. The appellant sustained fracture shaft of right femur, traumatic disarticulation, first and second toes cut and removed. He was admitted in the hospital on 12.8.1995 and discharged on 7.9.1995. He had undergone operation on 29.8.1995. Ext.A4 would show that blood transfusion was done on 12.8.1995. Ext.A5 series are the clinical laboratory requisition forms and Ext.A6 is the reference card dated 31.7.1996. He was again admitted in the hospital on 31.7.1996 and discharged on 8.3.1996, after 'K'nail removal. Ext.X1 is the disability certificate issued by the Medical Board attached to the Medical College Hospital certifying 25% permanent disability.

6. Considering the fact that at the time of accident the appellant was aged 17 years and a student studying in the College, the Tribunal fixed the notional monthly income as ₹1,500/-. Applying the multiplier of 16 with a disability of 25%, the Tribunal awarded a sum of ₹72,000/- towards compensation for permanent disability. As we have already noticed, the accident occurred on 12.8.1995. It was in the year 1995, the 2nd

Schedule to the Motor Vehicles Act was amended by fixing the notional monthly income as ₹15,000/-. Considering the facts and circumstances of the case, we find that the compensation awarded by the Tribunal under the head permanent disability represents a just and reasonable compensation and as such no interference of this Court is necessary.

7. Towards loss of amenities in life, the Tribunal granted only a sum of ₹5,000/-. Considering the injuries sustained by the appellant and the disability as reflected in Ext.X1 disability certificate issued by the Medical Board, we deem it appropriate to grant an additional compensation of **₹20,000/-** under this head. In the result, the compensation towards loss of amenities is refixed at ₹25,000/-.

8. Towards compensation for pain and suffering, the Tribunal awarded only a sum of ₹15,000/-. As we have already noticed, due to the injuries sustained in the accident, the appellant had undergone inpatient treatment as well as surgery on different occasions. In such circumstances, considering the nature of injuries and also the treatment undergone, we deem it appropriate to grant a further sum of **₹10,000/-** towards

compensation for pain and suffering. In the result, the compensation payable under the head pain and suffering is refixed as ₹25,000/-.

9. As far as the compensation awarded by the Tribunal under the heads transportation to hospital, extra nourishment, damage to clothing and medical expenses are concerned, it represents a just and reasonable compensation and as such the appellant is not entitled for any enhancement under those heads.

Thus the appellant is entitled for an additional compensation of **₹30,000/-**. For the compensation awarded, the Tribunal granted interest @ 7% per annum from the date of petition till realisation. In **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9)**, taking note of the fact that the nationalised banks are granting interest at the rate of 9% per annum on fixed deposits for one year, the Apex Court directed that, the compensation amount refixed shall bear interest at the rate of 9% per annum from the date of the claim. Applying the principle laid down in the aforesaid judgment, we deem it just and proper to refix the rate of interest as 9% per annum for the additional compensation awarded in this appeal from the date of

petition till realisation. Since the 2nd respondent insurer has admitted the liability, the said respondent shall deposit the additional compensation awarded in this appeal together with interest within a period of one month from the date of receipt of a copy of this judgment.

Appeal is disposed of as above.

Sd/-

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

Sd/-

**ANIL K.NARENDRA,
JUDGE**

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