

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

MACA.No. 1736 of 2014 ()

**AGAINST THE AWARD IN OPMV 1306/2005 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
KOZHIKODE DATED 14-10-2009**

APPELLANT(S)/PETITIONER:-:

**K.K.RAJAN, AGED 66 YEARS
S/O.KRISHNAN NAMBIAR, RESIDING AT PERUMTHODI HOUSE
P.O.KUTHIRAVATTAM, KOZHIKODE.**

**BY ADVS.SRI.AVM.SALAHUDEEN
SMT.EMIL STANLEY**

RESPONDENT/RESPONDENT:-:

**ORIENTAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, KINGSWAY BUILDING, MAVOOR ROAD JUNCTION
KOZHIKODE - 673 001.**

**BY ADV. DR.ELIZABETH VARKEY
BY SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

APPENDIX

PETITIONER'S ANNEXURE:

- ANNEXURE A1:** MEMO DATED 27.05.2014 ISSUED TO SANTHOSH KUMAR K.P. (ADVOCATE CLERK) BY ADV.RASHMI K.V., PARTER, BELVERDIA LEGAL L.L.P.
- ANNEXURE A2:** EXPLANATION DATED 30.05.2014 GIVEN BY SANTHOSH KUMAR K.P. TO ADV. RASHMI K.V.
- ANNEXURE A3:** THE NOTICE ISSUED BY ADV.RASHMI TO ADV.ANIL THOMAS, SR.PARTNER BELVERDIA LEGAL L.L.P, COCHIN WITH A REQUEST TO CONDUCT ENQUIRY AGAINST THE ADVOCATE CLERK
- ANNEXURE A4:** NOTICE DATED 03.06.2014 ISSUED TO THE SANTHOSH KUMAR K.P, ADVOCATE-CLERK SUSPENDING HIM BY ADV.ANIL THOMAS, SR.PARTNER BELVERDIA LEGAL L.L.P., COCHIN
- ANNEXURE A5:** LETTER DATED 04.06.2014 TO THE REGISTRAR GENERAL, HIGH COURT OF KERALA BY THE ADV.ANIL THOMAS, SR.PARTNER BELVERDIA LEGAL L.L.P, COCHIN, INFORMING THE SUSPENSION OF THE CLERK AND REQUESTING TO TAKE APPROPRIATE ACTION AGAINST THE ADVOCATE-CLERK WHO COMMITTED DERELICTION OF DUTY.

RESPONDENTS' ANNEXURE: N I L

//TRUE COPY//

P.A. TO JUDGE

P.B.SURESH KUMAR, J.

M.A.C.A. No.1736 of 2014

Dated this the 12th day of January, 2015

JUDGMENT

The claimant in a proceeding for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted to him.

2. The claimant was employed as a security person. It is stated by him in the application for compensation that he was earning a monthly income of Rs.4,500/-. He sustained serious injuries, including fracture of both bones of his right leg, in the accident took place on 15.04.2005. He was admitted and treated at the Medical College Hospital, Kozhikode for a continuous period of 39 days. He claimed a sum of Rs.1,00,000/- by way of compensation in the proceeding.

3. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled only for a sum of Rs.22,942/- by way of compensation. An award was accordingly passed for the said amount.

4. Heard the learned counsel for the appellant/claimant as

also the learned counsel for the respondent/insurer.

5. The learned counsel for the appellant pointed out that the compensation granted to the claimant for the loss of earnings and the loss of amenities and enjoyment in life are inadequate. The learned counsel for the respondent, on the other hand, pointed out that there is no evidence to indicate the income of the claimant and therefore, the compensation granted for the loss of earnings does not warrant interference.

6. In the case on hand, it is not disputed that the appellant was admitted and treated as in-patient in the Medical College Hospital, Kozhikode for 39 days in connection with the injuries sustained by him in the accident. Since both bones of his right leg were fractured, it can be presumed that the claimant would not have worked at least for a period of three months after discharge from the hospital. In the circumstances, I am of the view that the claimant is entitled to compensation for loss of earnings at least for a period of 5 months. The fact that the claimant was employed as a security person at the time of accident is not seen disputed. In **Ramachandrappa v. Manager, Royal Sundaram Alliance Ins. Co. Ltd.**, [2011 ACJ 2436] and in **Sanjay Kumar V. Ashok Kumar and another**

[2014 ACJ 653], it is held by the Apex Court that in so far as the persons working in the unauthorised sector and who are unable to produce any evidence to prove their income are concerned, their monthly income shall be reckoned at Rs.4,500/- for the purpose of granting compensation to them in motor accident cases. In the light of the said decisions of the Apex Court, the compensation for loss of earnings payable to the claimant is to be worked out, reckoning his monthly income at Rs.4,500/-. The Tribunal has awarded only a sum of Rs.2,000/- as compensation for the loss of earnings of the claimant. The claimant is, therefore, entitled to a further sum of Rs.20,500/- by way of compensation for the loss of earnings. As stated above, it is not disputed that the claimant sustained serious injuries including fracture of both bones of his right leg in the accident and he was treated in the Medical College Hospital as in-patient for a period of 39 days for the injuries sustained by him. Being a person aged 57 years, the claimant may not be able to stand, walk or run, as he would have, but for the accident. As such, he is entitled to a fair compensation for the loss of amenities and enjoyment in life also. The Tribunal granted only a nominal amount of Rs.1,000/- towards the loss of amenities and

enjoyment in life. According to me, the claimant is entitled to a further sum of Rs.9,000/- towards compensation for the loss of amenities and enjoyment in life.

In the result, the appeal is allowed in part and the impugned award is modified, granting a further sum of Rs.29,500/- by way of compensation to the claimant. Needless to say, the claimant is entitled to interest also for the enhanced compensation at the same rate at which he was granted interest for the amount awarded by the Tribunal, except for the period of delay in filing the appeal.

SD/-
P.B. SURESH KUMAR,
JUDGE