

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

MACA.No. 1807 of 2014 ()

OPMV 1127/2005 of M.A.C.T.,KOZHIKODE

APPELLANT(S)/PETITIONER:

RAJAN AGED 42 YEARS
S/O.GOVINDANKUTTY NAIR, ELAYEDATH HOUSE
MALAYAMMA P.O., REC, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S)/RESPONDENTS:

1. SAJU SEBASTIAN,
ETTUMANOORKARAN HOUSE, THOTTUMUKKAM, P.O.AREACODE
MALAPPURAM-673639.
2. NEW INDIA ASSURANCE CO.LTD.
DIVISIONAL OFFICE, SILVER PLAZA BUILDING
INDIRA GANDHI ROAD, KOZHIKODE-1.

R2 BY ADV. SRI.JOHN JOSEPH VETTIKAD
R2 BY ADV. SRI.C.JOSEPH JOHNY
R2 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.1807 of 2014

Dated 6th July, 2015

J U D G M E N T

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

2. The claimant is an artist. The accident took place on 11.1.2005. The claimant was aged 35 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.7,500/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. Ext.A2 is the wound certificate issued to the

claimant from the hospital, where he was admitted and treated in connection with the injuries sustained by him in the accident. The Tribunal found from the wound certificate that the claimant sustained fracture of his right radius. The claimant also sustained a few lacerated wounds on other parts of his body. It is seen that though the disability certificate of the claimant was part of the records, the impugned award was passed without considering the said disability certificate. A certified copy of the said certificate has been produced by the appellant in this appeal as an additional document. The disability certificate is one issued to the appellant by the Medical Board attached to the Medical College Hospital, Calicut. The Medical Board, as per the said disability certificate, assessed the permanent disability of the appellant at 10%. The disability certificate also indicates that even when the Medical Board examined the claimant on 1.6.2006, he had difficulty in supination and pronation.

5. As noticed above, the claimant is an artist. The inability of the claimant in moving his palm as noticed by the Medical Board would certainly affect his earning capacity as an artist. The Tribunal granted only a sum of Rs.1,500/- to the

claimant towards loss of income. Since the accident took place in the year 2005, in the absence of any evidence to prove the income of the claimant, the monthly income of the claimant should have been reckoned by the Tribunal at Rs.3,000/-. On an evaluation of the materials on record, I am of the view that the claimant is entitled to loss of earnings for a period of three months. The claimant is, therefore, granted a further sum of Rs.7,500/- on that head. Despite the fracture sustained by the claimant, only a sum of Rs.4,000/- is seen granted by the Tribunal towards pain and sufferings. According to me, the claimant is entitled to a further sum of Rs.6,000/- on that head. Towards continuing disability, no compensation is seen awarded by the Tribunal. In the light of the disability certificate issued by the Medical Board, I am of the view that the claimant is entitled to compensation for continuing disability reckoning his monthly income at Rs.3,000/- and disability at 10%, applying the multiplier '16'. The claimant is, therefore, entitled to a sum of Rs.57,600/- ($16 \times 10 \times 3000 \times 12 / 100$) for continuing permanent disability. Thus, the claimant is entitled to a further sum of Rs.71,100/- towards compensation.

6. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

7. In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.71,100/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz., 1299 days as ordered in C.M.Application No.2054 of 2014.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)