IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

MACA.No. 1589 of 2009 ( )
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AGAINST THE AWARD IN OP(MV) 1589/2000 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,PERUMBAVOOR DATED 23-01-2007

APPELLANT/PETITIONER::
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KURIAKOSE, S/O.MATHAI, PERINGASSERY
HOUSE, VENGOOR KARA, VENGOOR VILLAGE.

BY ADVS.SRI.E.C.POULOSE
SMT.BOBBY RAPHEAL.C

RESPONDENTS/RESPONDENTS::
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1. EBY K.VARGHESE, S/O.VARGHESE,
   KAINIKUDY HOUSE, VENGOOR KARA, VENGOOR VILLAGE.

2. S.RAJESH, RAJESH NIVAS, WARD NO.7/124,
   PERUMBAVOOR. [DELETED]

   [RESPONDENT NO.2 IS DELETED FROM PARTY ARRAY AT THE RISK OF APPELLANT AS PER ORDER DATED 11.6.2015 IN I.A.1897/2015 IN MACA 1589/2009]

3. NATIONAL INSURANCE CO. LTD.,
   BRANCH OFFICE, PERUMBAVOOR.

R3 BY ADV. SRI.JOE KALLIATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

**T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.**

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**M.A.C.A.No.1589 of 2009**

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**Dated this the 26th day of June, 2015**

**J U D G M E N T**

**K.P. Jyothindranath, J.**

The grievance of appellant is that the insurance company is exonerated from paying the compensation on the ground that the appellant is a pillion rider and is not covered by the policy. Secondly the appellant got a case that the compensation granted on different counts is also inadequate.

2. The facts in a nutshell is that on 31.7.2000 at about 7.50 p.m. while the appellant was travelling on a motorcycle bearing registration No.KL-7F-6622 as a pillion rider, the motorcycle capsized and he sustained grievous injuries. Alleging that the accident occurred due to the negligence of the rider of the motorcycle, a claim for compensation preferred for a total sum of Rs.1,25,000/- whereas the Tribunal only awarded a sum of Rs.36,530/-.

3. The first point raised is that the appellant is a

pillion rider and the insurance policy is a package policy which will cover a pillion rider. This point is now covered by the decision in **New India Assurance Co. Ltd. v. Hydrose [2008 (3) KLT 778]** wherein it is held that the package policy will cover a pillion rider also.

4. The next aspect argued before us is regarding the quantum of compensation. The claim of the appellant is that he is an Electrician by profession and is earning a sum of Rs.4,500/- per month and it is the case that he is aged only 33 years. He had sustained the following injuries:

1. Deformity and tenderness left wrist.
2. Multiple abrasions face.
3. Tenderness root of nose left side.

5. Investigation revealed that there is fracture to distal radius left and fracture to nasal bone. Ext.A6 is the discharge certificate which shows that the appellant was admitted on 31.7.2000 and was discharged only on 14.8.2000. Ext.A7 is the treatment certificate which shows that there was external fixator and the same was removed only on 26.9.2000. Thereafter he had undergone physiotherapy. The appellant also produced medical bills for

Rs.9,530/-. Thus considering the injuries as revealed from the documents and also after considering the submissions made by the learned counsel for the appellant as well as the counsel for the Insurance Company, compensation is re-fixed by taking the income of the appellant as Rs.3,000/- per month as follows:

| Head of Claim | Amount awarded in Rs. |
|---|---|
| Loss of income for 3 months 3000x3 | 9000 |
| Medical expenses | 9530 |
| Transportation | 1500 |
| Damage to clothings | 1000 |
| Extra nourishment | 1000 |
| Bystander's expenses 150x15 | 2250 |
| Pain and suffering | 30000 |
| Loss of amenities | 10000 |
| Total | 64280<br>Round off to **Rs.64300**<br>**(Sixty four thousand three hundred only)** |

Thus, the appellant is entitled for a total compensation of Rs.64,300/-.

The compensation will carry interest at the rate of 9% per annum from the date of petition till realisation and it is made clear that the whole amount of compensation will carry interest at the rate of 9%.

There will be a direction to the third respondent Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount after the same is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

**T.R. RAMACHANDRAN NAIR**
**JUDGE**

Sd/-

**K.P. JYOTHINDRANATH**
**JUDGE**

//True copy//

P.A. TO JUDGE

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