IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

MACA.No. 1969 of 2014 ()

OPMV 572/1999 of M.A.C.T.,KOZHIKODE

APPELLANT(S)/PETITIONER:

KUNIYIL KARTHIAYANI, AGED 66 YEARS
W/O.CHOYICHUTTY, ULLISSERIKUNNU, KALLALAM P.O.
KOZHIKODE.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S)/RESPONDENTS:

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1. M. RAMESH,
   S/O.GOPALAN, 'KALYANI NILAYAM', CHELAD
   THALASSERY, KANNUR, PIN-670104.

2. GANGADHARAN, AGED32 YRS.,
   S/O.RAMAKRISHNAN, VALAPPIL HOUSE, CHERUVANNUR P.O.
   KOZHIKODE, PIN-673003.

3. NEW INDIA ASSURANCE CO.LTD.,
   DIVISION OFFICE, SILVER PLAZA BUILDING
   INDIRA GANDHI ROAD, KOZHIKODE, PIN-673001.

R3 BY ADV. SRI.N.S.NAJEEB
R3 BY ADV.SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.1969 of 2014

Dated 13th January, 2015.

J U D G M E N T

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 her.

2. The claimant was aged 63 years at the time of the accident. The accident took place on 24.4.1995. She claimed in the application for compensation that she was earning a sum of Rs.2,000/- per month from her occupation of rearing a cow. She suffered various injuries including fracture of right lower end radius and fracture of right distal ulna wrist. She was admitted and treated in the Medical College Hospital, Kozhikode, for a period of ten days. She claimed a sum of Rs.60,000/- by way of compensation.

3. The learned Tribunal, on an evaluation of the materials on record, found that the claimant is entitled only for a sum of Rs.11,250/- towards compensation and accordingly, an

award for the said amount was passed. The specific case of the claimant was that the vehicle involved in the accident was covered by a valid insurance policy issued by the third respondent at the time of accident and therefore, the third respondent is liable to indemnify the first respondent, the owner of the vehicle. However, the Tribunal found that the third respondent is not liable to indemnify the owner of the vehicle. Consequently, the award was passed only against the owner of the vehicle.

4. Heard the learned counsel for the appellant/claimant as also the learned counsel for the third respondent/insurer.

5. The learned counsel for the appellant contended that the accident took place on 24.4.1995 and the vehicle had a valid insurance policy issued by the third respondent at the time of the accident. However, it was pointed out that after the accident, the insurer had cancelled the policy on 15.5.1995, on the ground that the cheque issued by the first respondent/owner towards payment of premium was dishonoured by the bank and it is on that basis, the insurer was

exonerated from the liability. According to the learned counsel, in the light of the decisions in **United India Insurance Co. Ltd. v. Laxmamma and others** [2012 ACJ 1307], **Oriental Insurance Co. Ltd. v. Sivankutty** [2005(4) KLT 108 (FB)] and **New India Assurance Co. Ltd. v. Rula and others** [(2000)3 SCC 195], the decision of the Tribunal in exonerating the insurer from the liability is unsustainable. He contended that in the nature of the injuries sustained by the claimant, the compensation granted is also inadequate. According to him, the compensation granted for pain and sufferings and the compensation granted for continuing permanent disability are too meagre. He has also contended that no compensation whatsoever, has been granted for the loss of amenities.

6. I have considered the contentions raised by the appellant. In view of the decisions relied on by the learned counsel for the appellant, it is now settled that if the vehicle involved in the accident is covered by a policy, the fact that the same is cancelled subsequently will not affect the obligation of the insurer to indemnify the owner of the vehicle. The right, if any, of the insurer in a case like this, is only to recover the

liability from the owner, after paying the compensation determined as due to the claimant. The impugned award to the extent it exonerated the insurer, in the circumstances, is unsustainable and liable to be set aside.

7. Coming to the quantum of compensation claimed, as rightly pointed out by the learned counsel for the appellant, only a sum of Rs.4,000/- is seen granted towards pain and sufferings. Ext.C1 proceedings of the Medical Board indicates that the claimant was suffering from the following disabilities at the time of her examination by the Medical Board :

> “Malunited fracture Lower End Radius ® with restriction of wrist dorsiflexion and palmar flexion. Malunited fracture distal ulna ® wrist”.

It certifies that the claimant is physically handicapped and her permanent disability is 10%. In view of the fact that the claimant had suffered multiple fractures, being a lady at the age of 63 years, I feel that she is entitled to some more amount by way of compensation towards pain and sufferings, which I fix at Rs.12,000/-. As pointed out by the learned counsel for the appellant, no compensation is seen granted for loss of amenities. It is beyond dispute that the claimant may not be able to lead the same life after the accident and she would be certainly deprived of various amenities in life. She is, therefore, entitled to a minimum amount of Rs.10,000/- by way of compensation for loss of amenities in life also. Coming to the issue relating to the compensation payable to the claimant for continuing disability, in **Lata Wadhwa v. State of Bihar** (AIR 2001 SC 3218) the Apex Court held that in the case of home makers/house wives between the age group of 62 to 72 years, their income should be reckoned as Rs.10,000/- per annum for the purpose of working out the compensation payable to them. The accident in the case dealt with by the Apex Court took place on 3.3.1989. The accident in this case took place on 24.4.1995. In the circumstances, I am reckoning the income of the appellant at Rs.15,000/- per annum for the purpose of determining the compensation payable to her towards continuing permanent disability. If the compensation payable to the claimant for continuing disability is worked out in that fashion, applying '8' as the multiplier, she is entitled to a sum of Rs.12,000/- on that head. The claimant has been granted only a sum of Rs.4,500/- by the Tribunal for permanent disability. Thus, the claimant is entitled to a further sum of Rs.25,500/- by way of compensation.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal to the appellant is modified, granting a sum of Rs.25,500/- more by way of compensation. Needless to say, the claimant will be entitled to interest for the enhanced compensation also at the same rate at which the interest was granted by the Tribunal for the compensation awarded. It is made clear that the insurer will be entitled to recover the compensation paid to the claimant from the owner of the vehicle.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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