

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

MACA.No. 1796 of 2009 (A)

AGAINST THE AWARD IN OPMV 3735/2002 of MACT,TSR DATED 11-11-2008

APPELLANT/PETITIONER:

SUBRAMANIAN, S/O.SANKARAN,
AGED 55 YEARS, THECKANATH, MULLASSERRY VILLAGE
PERUVALLUR DESOM, THRISSUR DISTRICT.

BY ADVS. SRI.M.R.DHANIL
SRI.M.H.HANIL KUMAR

RESPONDENTS/RESPONDENTS:

1. P.K.ASHRAF, POKKALILLATH HOUSE,
KECHERY P.O., THRISSUR (OWNER OF KL-8J-9549 BUS).

* 2. JOSHY, S/O.VELU,
PUTHUSSEERRY HOUSE, PERUMANNU DESOM, KECHERY P.O.
THRISSUR (DRIVER OF KL-8J-9549 BUS). **[DELETED]**

3. M/S.NEW INDIA INSURANCE CO.LTD.,
KUNNAMKULAM BRANCH, THRISSUR.
(INSURER OF KL-8J-9549 BUS).

*[RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF
APPELLANT VIDE ORDER DATED 8-11-13 IN IA NO.2892/13 IN MACA 1796/09.]

R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

M. A. C. A. No.1796 of 2009

Dated this the 14th day of September, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant sustained injuries in a motor accident that occurred on 15-09-2001 involving a motorcycle by which he was travelling and a bus owned by the first respondent and insured with the third respondent. He has preferred a petition before the Motor Accidents Claims Tribunal, Thrissur, claiming compensation on account of the injuries sustained in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the driver of the bus and awarded a total compensation of ₹31,950/- under various heads as follows:

Expenses for transport	-	₹ 1,000/-
Extra-nourishment	-	₹ 1,000/-

Damages to clothing	-	₹ 500/-
Expenses for treatment	-	₹ 11,950/-
Expenses for bystander	-	₹ 2,500/-
Pain and suffering	-	₹ 8,000/-
Loss of amenities	-	₹ 7,000/-

The third respondent was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent Insurance Company. Notice to the first respondent remains dispensed with and the second respondent remains deleted from the party array.

3. The appellant has sustained multiple abrasions on the right cheek, chin, right shoulder, knees and on the head. Also suffered lacerated wounds on the right leg laterally 7x3x1 c.m. and 4 x 1 x 1 c.m. He was taken to the West Fort Hospital, Thrissur, after the accident. He has undergone inpatient treatment there from 15-09-2001 to 25-09-2001.

Neurosurgery consultation was also done there. Suspected cerebral concussion and soft tissue injury are noted as final diagnosis in the Discharge Summary issued from that Hospital. He was admitted to District Hospital, Thrissur, on 25-09-2001 and has undergone inpatient treatment there till 04-10-2001. This time he was admitted with chest pain following the accident. It is also noted in the Reference Card issued from that Hospital that his is a known case of Hyper Thyroidism.

4. The fact that the appellant was a First Grade Draftsman during the period of accident is not in dispute. Learned counsel for the appellant submits that the appellant has availed himself of leave for 25 days for the purpose of undergoing inpatient treatment as well as outpatient treatment. This is also not disputed. This, in the facts and circumstances, we accept as true. The Tribunal has not awarded any amount towards loss of earnings or loss of leave. The appellant does not have a case that he has lost any amount as a result of availing of leave. But, the fact

remains that he has lost 25 days leave which he could have utilised for some beneficial purpose according to his choice. On considering the loss of leave, we award an amount of ₹3,000/- under that head. On considering the nature of injuries and treatments, we enhance ₹8,000/- awarded under the head of pain and suffering to ₹12,000/-. Ext.A9 is a certificate issued by Dr. Balumohan, Consultant Neurosurgeon, in which it is certified that the appellant sustained head injury in 2001 and he has post concussion syndrome and memory disturbances. As rightly pointed out by the learned Tribunal, the disability so certified in the document remains not proved. Even then, considering the suspected cerebral concussion noted in Ext.A7 Discharge Summary issued from the West Fort Hospital as well as the injuries sustained and treatments undergone, we enhance the amount of ₹7,000/- awarded by the Tribunal under the head of loss of amenities to ₹12,000/-. The appellant does not have a case that he has lost any amount during his entire career with the Government as a result of the injuries

sustained in the accident. It can be presumed that he has retired from service. He has no case that his pension is affected due to the accident. We find no reason to interfere with the amounts awarded by the Tribunal under other heads. Thus, the appellant is entitled to an additional amount of ₹12,000/- (Rupees twelve thousand only) over and above the amount awarded by the Tribunal as compensation. The said amount of ₹12,000/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The third respondent Insurance Company shall deposit the amount within 30 days from the date of receipt of a copy of this judgment.

This appeal is allowed in part as above.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//True Copy//

P.A. To Judge

