

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

MACA.No. 1462 of 2010 ()

AGAINST THE AWARD IN OPMV 1367/2003 of M.A.C.T., THALASSERY DATED 22-
01-2010

APPELLANT/PETITIONER:

R.SOMANATHA KURUP,AGED 48 YEARS,
S/O.K.RAMAKRISHNA KURUP, K.P.HOUSE, VELLUR,
P.O.VELLUR, PAYYANNUR(VIA), KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT/RESPONDENT NO.3:
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UNITED INDIA INSURANCE CO.LTD.,
PAYYANNUR.

BY ADV. SMT.K.C.BEENA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N. RAVINDRAN & K. RAMAKRISHNAN, JJ.

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M.A.C.A.No.1462 of 2010

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Dated this the 25th day of September, 2015.

JUDGMENT

Ramakrishnan, J.

The petitioner in OP(MV)No.1367/2003 on the file of the Motor Accidents Claims Tribunal, Thalassery is the appellant herein. The claim petition was filed by the petitioner on the allegation that on 17.6.2003 while he was travelling in an auto rickshaw with No.KL.13A-6138 when it reached at Perumba, a mini lorry with No.13D-7538 driven by the second respondent, owned by the first respondent and insured by the third respondent came in a negligent manner and hit against the auto rickshaw causing severe injury to the petitioner. The petitioner was an auto rickshaw driver by profession and getting Rs.6,000/- per month and he sustained severe injuries and has sustained permanent disability. He claimed Rs.3,50,000/- as compensation on various heads.

2. After considering the evidence, court below found that the accident occurred due to the negligence of the second respondent in the lower court and awarded compensation of Rs.2,94,400/- as follows:

1. Bystander's expense	: Rs. 5,900.00
2. Medical expenses	: Rs. 95,500.00
3. Pain and sufferings	: Rs. 20,000.00
4. Disability income	:Rs. 1,56,000.00
5.Extra nourishment & review	: Rs. 5,000.00
6.Loss of earnings for 4 months	: Rs. 10,000.00
7.Transport to hospital	: Rs. 2,000.00

Total	:Rs.2,94,400.00
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Dissatisfied with the quantum of compensation awarded, the petitioner has filed this appeal.

3. Heard counsel for the petitioner and standing counsel appearing for the third respondent insurance company.

4. Counsel for the petitioner submitted that the court below has taken only Rs.2,500/- as his income which is very low. Further, no amount was given for future prospects while assessing compensation under the head permanent disability. Further, since he is an auto rickshaw driver, with 40% disability, he may not be able to ply the vehicle. The court below ought to have taken 100% disability for that purpose. The amount

awarded under the heads, pain and sufferings, extra nourishment, loss of earnings are very low. No amount was awarded under the head loss of amenities in life. So the petitioner is entitled to get enhancement in all heads.

5. On the other hand, standing counsel for the insurance company submitted that the court below had considered all the aspects and just and reasonable compensation has been awarded.

6. The fact that the petitioner sustained 40% disability has been strengthened and proved by producing Ext.A8 certificate issued by the Medical Board though in Ext.X1 it was shown as 20%. It is also seen from the disability certificate that he is having loss of vision of one eye. Even as per the Workmen's Compensation Act, the disability will come to 40%. So 40% disability fixed by the Medical Board appears to be reasonable which has been approved by the Tribunal as well. The fact that he is an auto rickshaw driver is proved by producing Ext.A9 driving licence which shows that he is having badge to drive auto rickshaw as well. The accident occurred in the year 2003. So considering the circumstances, we feel that an amount of

Rs.2,500/- fixed by the court below as monthly income appears to be on the lower side and we refix the same as Rs.3,000/- per month. It will be seen from the documents produced and also seen from the discussions in the lower court judgment that he was treated as in patient for 59 days. Further, he had undergone an operation for implantation for the fracture and he is with that implant even now. So considering those aspects, the period of loss of earnings taken by the court below as four months appears to be on the lower side and we take it as six months. So he will be entitled to get Rs.18,000/- under the head loss of earnings instead of Rs.10,000/- fixed by the court below. Therefore, he is entitled to get Rs.8,000/- more under that head.

7. In the decision reported in ***Rajesh v. Rajbir Singh*** (2013 (3) KLT 89), the Supreme Court has held that even in cases of self employed persons also, 30% will have to be taken for the purpose of future prospects and where the injured is more than 50 years, then it will have to be taken as 15%. In this case, the age of the petitioner is 47 years. So 30% will have to be taken for future prospects. So taking into account this

aspect for the purpose of calculating compensation under the head permanent disability, we fix his monthly income as Rs.4,000/-. He will be entitled to get Rs.2,49,600/- ($4000 \times 12 \times 13 \times 40\%$) instead of Rs.1,56,000/- awarded by the court below, thereby he is entitled to get Rs. 93,600/- more as additional compensation under the head compensation for loss of earning power which we inclined to award under that head.

8. Considering the nature of disability sustained, the court below had not awarded any amount under the head loss of amenities in life. He is aged 47 years. He sustained 40% permanent disability due to loss of vision of one eye. He will have to be with that disability for the remaining years of life. Granting compensation for the loss of earning power and loss of amenities in life are of two counts. One represents loss of earning capacity and other represents loss amenities in life on account of the disability which he will have to suffer for the remaining years of life. The court below will have to take these aspects while awarding compensation under the head loss of earning capacity and loss of amenities in life. But Supreme Court has only stated that percentage of disability should not be taken

for the purpose of awarding compensation under both heads which will amount to duplication in awarding of compensation. So considering those aspects, we feel that Rs.50,000/- can be awarded as compensation under the head loss of amenities in life and this amount is awarded under that head.

9. It is also brought out in evidence that his fracture was treated with implant fixation and that will have to be removed in future for which he will have to undergo another surgery which may require some more expenditure. So considering these aspects, we feel that Rs.10,000/- can be awarded under the head future medical expenses and we do so. The court below had awarded only Rs.20,000/- as compensation for pain and sufferings which appears to be low considering the nature of injury sustained and also the period of treatment undergone. So we feel that, that can be enhanced to Rs.30,000/- from Rs.20,000/- thereby he will be entitled to get Rs.10,000/- more under that head and we do so. On all other aspects, the court below had considered and awarded proper and just compensation. So, the petitioner will be entitled to get additional compensation of Rs.1,71,600/- which the respondent

insurance company is liable to pay with 9% interest on Rs.1,61,600/- from the date of petition till payment. Three months time is granted to the insurance company to pay the amount.

With the above modification of the amount awarded by the tribunal, this appeal is allowed in part and disposed of accordingly.

Sd/-

P.N. RAVINDRAN, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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