

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

MACA.No. 1536 of 2010

AGAINST THE AWARD IN OPMV 1901/2002 of PRINCIPAL MOTOR ACCIDENT
CLAIMS TRIBUNAL, KOZHIKODE DATED 03-05-2008

APPELLANT/CLAIMANT:

MURALEEDHARAN, S/O. GOPALAN, AGED 35 YEARS,
CHERUKAIYYIL HOUSE, P.O. PANTHEERANKAVU, PUTHOORMADAM
KOZHIKOE DISTRICT.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS:

1. A.RAJAN, S/O. UNNIPERAVAN, VADAKKEYIL HOUSE,
P.O. KAKKODI, KOZHIKODE
PIN - 673611.
2. THE ORIENTAL INSURANCE CO.LTD.
BRANCH OFFICE, KINGSWAY BUILDING, MAVOOR ROAD,
KOZHIKODE DISTRICT, PIN - 673 001.

R2 BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.BHAVADASAN, J.

M.A.C.A No. 1536 OF 2010

Dated this the 29th day of May, 2015.

J U D G M E N T

Aggrieved by the pittance granted as compensation by the Motor Accidents Claims Tribunal, the claimant has come up in appeal.

2. Most of the facts are not in dispute. The appellant-claimant suffered an accident on 31.03.2002 while riding a motor cycle as bus rammed into his vehicle. He filed a petition before the Tribunal claiming compensation. The Insurance Company denied the incident and said that they are not liable. The Tribunal, on appreciation of facts in the case, awarded Rs.5,000/- as compensation and held that that would be a just and reasonable compensation in the facts of the case. The said order is assailed in this appeal.

3. Learned counsel appearing for the appellant contended that the Tribunal was totally ignorant about the gravity of injury and has placed reliance on irrelevant aspect to deny just and

proper compensation to the claimant. A perusal of the order, according to the learned counsel, would show that there has not been any application of mind to the facts of the case and the Tribunal has awarded a paltry amount as compensation without any justification at all.

4. That the claimant before the court below suffered an accident is beyond any dispute. The consequence of that accident should have been taken note of by the court below while fixing the compensation. No amounts for pain and sufferings, loss of income, medicines etc. are given by the Tribunal. In fact, according to the learned counsel, it is extremely difficult to understand how the amount Rs.5,000/- has been arrived at.

5. Learned counsel appearing for the respondents pointed out that in the absence of any evidence to show the gravity of the fracture, amount awarded by the Tribunal is justified.

6. In spite of best efforts made by this Court, this Court is unable to justify the quantum of award given by the Tribunal. As to how the Tribunal had arrived at a figure of Rs.5,000/- as just and reasonable compensation is beyond comprehension. There

are certain principles for computing the compensation. The said principles have been given a total go by the Tribunal. The injured is entitled to compensation under the heads like loss of income, pain and sufferings, medicines, loss of amenities and enjoyments in life etc.

7. That the claimant in the case on hand suffered a fracture on his clavicle cannot be disputed in view of the wound certificate and such other documents produced at the time of evidence. Obviously, having suffered a fracture on the clavicle, he must have been unable at least for two months to go for his job. He must have incurred expenses for buying medicines and also for travelling to and from the hospital. He must have suffered considerable amount of pain. His enjoyments in life would have been affected by the fracture and certainly he would have been disabled from performing his job as before. Compensation under the above heads have been conveniently omitted to be considered by the Tribunal and that certainly calls for interference at the hands of this Court.

8. The accident occurred in 2002. Considering the fact that

the injury suffered is on his right clavicle, it is reasonably presumed that the claimant would not have been able to go for a job for two months and he has incurred loss of income for which he is entitled to compensation. Considering Rs.2,500/- as income for one month, Rs.5,000/- will be a just and reasonable compensation towards loss of income for two months. Even though the claimant has not produced medical bills, he must have taken medicines and incurred expenses. So, a sum of Rs.500/- is awarded in that regard. He must have incurred expenses for travelling to and from the hospital which is quantified as Rs.250/-. Considering the nature of injuries, it is felt that a sum of Rs.7,000/- will be a sufficient for the pain and sufferings of the claimant. Obviously, because of the fracture, the claimant would have suffered loss of amenities in his life and would not have been in a position to perform his job as before. It is true that disability certificate has not been produced and therefore this Court is not in a position to assess the actual disability suffered by the claimant. But it cannot be said that he has not suffered any disability. He is a marble worker by profession. Considering

his profession and also the loss of amenities in life, it is felt that for combined loss of amenities in life and disability, a sum of Rs.7,500/- can be granted.

Therefore, total compensation amounts to Rs.20,250/- which is rounded to Rs.20,000/-. Tribunal has awarded a sum Rs.5,000/- as compensation. An additional sum of Rs.15,000/- is granted as compensation. The entire amount of compensation shall be paid by the Insurance Company with 8% interest from the date of the petition within a period of one month from today.

This appeal is allowed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True copy //

P.A. to Judge.