

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 2188 of 2014 ()

AGAINST THE AWARD IN OPMV 76/2009 of ADL.D.C. & MACT,THODUPUZHA DATED
24-03-2014

APPELLANT(S)/APPELLANT/PETITIONER:

UMMER AGED 54 YEARS
S/O.KUNJU MUHAMMED, KALAYITHINGAL HOUSE
PARIYARAM BHAGOM, UDUMBANNUR, THODUPUZHA
IDUKKI DISTRICT

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS/RESPONDENTS:

1. K.C.JOSEPH
KALARICKATHOTTIYIL HOUSE, VAZHAKULAM P.O, MUVATTUPUZHA
ERNAKULAM DISTRICT 686 670 (OWNER)
2. ABRAHAM
S/O.THOMAS, EZHUPARAMBIL HOUSE, VALLIPPRA BHAGOM
MUTTOM P.O, THODUPUZHA IDUKKI DISTRICT 685 587 (DRIVER)
3. THE BRANCH MANAGER
ORIENTAL INSURANCE CO.LTD, THODUPUZHAP.O
IDUKKI DISTRICT 685 584

R3 BY ADV. SRI.MATHEWS JACOB (SR.)

R3 BY ADV. SRI.P.JACOB MATHEW

BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.2188 of 2014

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Dated this the 22nd day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(MV).No.76 of 2009 on the file of the Motor Accidents Claims Tribunal, Thodupuzha. The respondents are the respondents therein. The appellant instituted O.P. (MV).No.76 of 2009 on 16.02.2009 claiming the sum of ₹9,00,000/- as compensation for the injuries sustained by him in a motor accident that took place at 2 pm on 31.08.2008. The claimant had in the said motor accident sustained the following injuries:

- i. Lacerated wound on the right eyebrow.
- ii. Lacerated wound on the right eyebrow.
- iii. Abrasion on the extreme toe.
- iv. Fracture of the right hip, dislocation.
- v. Fracture of fibula.
- vi. Both column fracture acetabulum with commuted post wall post dislocation hip.

He had undergone treatment for the injuries sustained by him at Medical Trust Hospital Ernakulam during the period from 31.8.2008 to 7.10.2008 (38 days) and at Chazhikattu hospital, Thodupuzha during the period from 03.09.2013 to 18.09.2009 (16 days).

2. Before the Motor Accidents Claims Tribunal, the appellant

contended that the accident happened due to the rash and negligent driving of a stage carriage bus owned by the first respondent, driven by the second respondent and insured by the third respondent. Upon receipt of the summons, the first respondent entered appearance and filed a written statement denying and disputing the averments in the claim petition. He also contended that the stage carriage bus was covered by a valid policy of insurance issued by the third respondent. The second respondent, the driver did not enter appearance and he was set ex-parte. The third respondent insurer entered appearance and filed a written statement contending *inter alia* that the compensation claimed is exorbitant and excessive. The insurer also contended that the accident happened due to the negligence of the driver of the motor car in which the claimant was travelling. Though the third respondent admitted the fact that the stage carriage bus involved in the accident was covered by a valid policy of insurance issued by it, it also contended that the second respondent driver did not possess a valid driving licence and therefore there is a breach of the policy conditions. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the stage carriage bus. The Motor Accidents Claims Tribunal also awarded the sum of ₹9,70,685/- as compensation and directed the third respondent insurer to deposit the

said amount together with interest at 8.5% per annum from the date of petition (16.2.2009) till the date of deposit. The claimant has, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

3. We heard Sri. T.R. Harikumar, learned counsel appearing for the appellant and Sri. Mathews Jacob, learned Senior Advocate appearing for the third respondent. We have also gone through the pleadings and the materials on record. The claimant had in the claim petition stated that he was aged 48 years and was earning a monthly income of ₹10,000/- by running a stationery shop. Since no evidence was adduced to prove the income or avocation of the claimant, the Motor Accidents Claims Tribunal notionally fixed his monthly income as ₹4,000/-. On that basis, it awarded the sum of ₹36,000/- as compensation for loss of earnings for a period of nine months. Taking ₹4,000/- as the multiplicand and 11 as the multiplier, the Motor Accidents Claims Tribunal awarded the sum of ₹2,11,200/- as compensation for disability which was assessed by the medical board at 40%.

4. Exts.A8 and A10 disclose that the claimant had undergone treatment in two different hospitals as an in-patient. On account of the seriousness of the injuries, he was not in a position to move about for a considerably long time. Even when he appeared in court, he was on

crutches and was limbing. The Motor Accidents Claims Tribunal has therefore awarded him compensation for loss of earning for a period of nine months. However, such compensation was awarded notionally fixing his monthly income as ₹4,000/-. As stated earlier, the accident took place on 31.8.2008. The appellant was then aged 48 years. Having regard to the fact that he was maintaining a family and was also the owner of a motor car which he himself was driving, the Tribunal ought to have in our opinion notionally fixed his income at ₹5,000/- instead of ₹4,000/-. Computed on that basis, the compensation payable to him towards loss of earnings for a period of nine months would be ₹45,000/-. The Tribunal has by the impugned award awarded only the sum of ₹36,000/- under that head. We accordingly award a further sum of ₹9,000/- as compensation under the head loss of earnings.

5. Ext.A9 disability certificate issued by the medical board constituted by the Superintendent, Taluk Head Quarters Hospital, Thodupuzha discloses that the claimant had suffered 40% whole body disability. The claimant was as on the date of the accident aged 48 years. The Tribunal has however taken into account his age when the case came up for disposal. Having regard to the age of the appellant as on the date of the accident, viz; 48 years, the multiplier ought to have been 13. In any case, there is no evidence before the tribunal to

prove that the deceased attained the age of 50 years. In the absence of any evidence to show that the claimant had crossed the age of 50 years as on the date of the accident, the Tribunal ought to have in our opinion taken the multiplier as 13. Computed on that basis, the compensation payable to the appellant claimant under the head permanent disability is ₹5,000/- X 12 X 13 X 40/100 = ₹3,12,000/-. The Motor Accidents Claims Tribunal has awarded only the sum of ₹2,11,200/- under that head. We accordingly award a further sum of ₹1,00,800/- as compensation under that head.

6. Ext.A7 accident register cum wound certificate issued from Holy Family Hospital, Muthalakodam, Thodupuzha discloses that the claimant was initially taken to the said hospital and from there he was taken to Medical Trust Hospital, Ernakulam where he underwent treatment as an in-patient for a period of 38 days from 31.8.2008 to 7.10.2008. Ext.A8 discharge summary issued from Medical Trust Hospital, Ernakulam discloses that he had undergone a surgery on 5.9.2008 and that on account of the post operative complications which led to retroperitoneal collection, he had to undergo exploratory laprotomy on 11.09.2008. Later the claimant underwent treatment as an in-patient at Chazhikkattu Hospital, Thopdupuzha where he underwent another surgery for total hip replacement. Having regard to the extensive injuries undergone by the claimant, as also the post

operative complications which arose pursuant to first surgery, we are of the opinion that the Motor Accidents Claims Tribunal should have awarded the sum of ₹1,00,000/- as compensation under the head pain and suffering as prayed for, instead of limiting it to ₹70,000/-. We accordingly award an additional sum of ₹30,000/- as compensation under the head pain and suffering.

7. The impugned award discloses that the Motor Accidents Claims Tribunal awarded only the sum of ₹40,000/- as compensation under the head loss of amenities as against the claim of ₹50,000/-. The medical board which examined the claimant has in Ext.A9 stated that the claimant walks with a limp due to right foot drop and he is not able to squat due to the prosthesis in the right hip joint. Having regard to the said finding, we are of the opinion that the Motor Accidents Claims Tribunal ought to have awarded the entire compensation claimed under the head loss of amenities instead of limiting it to ₹40,000/-. We accordingly award an additional sum of ₹10,000/- under the head loss of amenities. We find no reason to enhance compensation awarded under the other heads.

8. We accordingly award an additional sum of ₹9,000/- + ₹1,00,800/- + ₹30,000/- + ₹10,000/- = ₹1,49,800/- as compensation over and above the compensation awarded by the Motor Accidents Claims Tribunal. As stated earlier, the accident took place on

31.8.2008. The impugned award was passed on 24.3.2014. The Motor Accidents Claims Tribunal however awarded interest only at the rate of 8.5% per annum from the date of the petition till realisation. It is now well settled by a series of decisions by the Apex Court that interest can be awarded at the rate of 9% per annum. We are therefore of the opinion that the Motor Accidents Claims Tribunal ought to have awarded interest on the compensation awarded by it at 9% per annum instead of 8.5% per annum.

We accordingly allow the appeal and award the sum of ₹1,49,800/- as compensation to the appellant/claimant over and above the compensation awarded by the Tribunal. The third respondent insurer shall deposit the said amount together with interest at 9% per annum from the date of petition till the date deposit within two months from today. The insurer shall also deposit the difference in the interest on the compensation awarded by the Tribunal within the period of two months. Upon such deposit being made, the amount deposited shall be released to the appellant. No costs.

sd/-

**P.N.RAVINDRAN
JUDGE**

sd/-

**ANU SIVARAMAN
JUDGE**

kp/-

True copy

P.A.To Judge