

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 1612 of 2010 ()

AGAINST THE AWARD IN OPMV 916/2006 of MACT,THODUPUZHA DATED
26-06-2010

APPELLANT/PETITIONER:

IBRAHIM, S/O HANEEFA, NADUKUDIYIL HOUSE
VANNAPPURAM KARA, VANNAPPURAM VILLAGE.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS/RESPONDENTS:

1. P.C.BABU, S/O CHACKO, PARUTHIKUNNEL
HOUSE, PAMPAKUDA KARA
MUVATTUPUZHA 686 661 .[DELETED]

[RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANT AS PER ORDER DATED 26.02.2015 IN IA 673/15.]

2. THE MANAGER, NATIONAL INSURANCE CO. LTD.
BRANCH OFFICER, THRIPIUNITHURA.682 301

3. BIJU PAULOSE, KOMBATHU HOUSE,
PUNNACKKADU BHAGOM, KEERAMPARA.686 691

4. VALSA, W/O. LATE P.C.BABU,
PARUTHIKUNNEL HOUSE, PAMPAKUDA KARA, MUVATTUPUZHA.
686 661

R4 BY ADV. SRI.P.G.JAYASHANKAR

R4 BY ADV. KUM.P.G.GAYATHRI

R2 BY ADV. SRI.PMM.NAJEEB KHAN

R3 BY ADV. SRI.P.CHANDRASEKHARAN PILLAI (VENNELA)

R3 BY ADV. SMT.SIMMI.T.V

R3 BY ADV. SMT.SANDHYA R.NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.1612 OF 2010

Dated this the 1st day of June,2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred from the award dated 26.6.2010 in O.P.(MV)No.916/2006 on the file of the Motor Accidents Claims Tribunal, Thodupuzha. The case of the appellant is that the appellant was riding a motor bike bearing Reg.No.KL 04 F/4504 which was hit by a bus bearing Reg.No.KL 6/5943 which was driven rashly and negligently by the driver of the bus. The accident occurred on 14.10.2006 at about 10 p.m.

2. Alleging negligence on the side of the driver of the bus, the appellant herein filed the above petition. After considering the evidence before the Tribunal, the Tribunal awarded compensation of ₹ 50,000/- with 7.5% interest from the date of petition and there is a direction that the amount shall be deposited by the Insurance Company within one month and the Company will be entitled to recover the

amount so deposited from the fourth respondent who was impleaded as the legal heir of the first respondent, the owner of the bus.

3. When the appeal came up for hearing, the learned counsel for the appellant/petitioner submitted before us that the amount awarded is inadequate. It is also the submission that even though the Tribunal found that the appellant is entitled for a total compensation of ₹72,100/-, awarded only a sum of ₹50,000/- on the ground that the appellant limited his claim to the tune of ₹50,000/- before the Tribunal. It is also the submission that the amounts awarded under various heads are inadequate.

4. The learned counsel appearing for the fourth respondent submitted in the Bar that the appellant has not arrayed the actual driver of the bus, who drove the vehicle at the time of the accident.

5. In this case, the appellant was admitted in the hospital on 14.10.2006 with the history of Road Traffic Accident. The injuries noted in the wound certificate are :

0.5 cm. Long laceration on the right thumb (palmar)
laceration on right wrist anteriorly.

Abrasion on right knee

3 cm. Long incised injury on right middle finger and 2 cm. Long on right little finger.

3 cm. Long on inner aspect of right hand etc.

6. It can be further seen that X-ray revealed no bony injury. It is seen that the injuries are treated conservatively. Thereafter, on 20.12.2006, the patient was complaining of numbness of fingers. As such it is suspected that there is injury on the median nerve and it was repaired on 25.10.2006. He was admitted in the hospital and was discharged on 30.10.2006. The Medical Board assessed his disability as 12%. After considering the disability assessed by the Board and the injury sustained, the Tribunal assessed a total compensation of ₹ 72,100/-, but limited the compensation to ₹50,000/- on the ground that the appellant limited his claim to ₹50,000/-.

7. It can be seen that the legal position regarding just compensation is already settled by the Honourable Apex Court in the decisions reported in Nagappa v. Gurudayal Singh (2003 (1) KLT 115) and in Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC).

Regarding the quantum assessed by the Tribunal, it can be seen that the Tribunal quantified the compensation towards disability as ₹ 57,600/-, taking the monthly income as ₹2,500/-.

8. We have carefully examined the injuries sustained by the appellant as well as the observation made by the Tribunal while he was present in the Tribunal, which is as “petitioner present, learned counsel for both sides present. On observation there is a small swelling on the inner aspect of right wrist.”. Thus, we feel that the compensation assessed on the disability aspect is on a higher side, but at the same time, it is to be considered that the income taken is only ₹2,500/- per month and towards pain and suffering only a sum of ₹7,000/- is granted. Thus it can be seen that the amounts assessed on other counts are on a lower side which will balance the amount already awarded under the head of disability. We feel that no interference on the just compensation assessed by the Tribunal is warranted. Thus, as per the dictum laid down in the above referred decisions, the appellant is entitled for ₹ 72,100/- as just compensation. We award the amount accordingly.

9. In respect of the arguments advanced by the learned counsel for the respondent/owner, it can be seen that the said contention was not seen raised before the Tribunal and as such it cannot be raised for the first time before this forum. The learned counsel for the appellant also submitted before us that the interest may be granted at the rate of 9% per annum. But considering the facts and circumstances of the case, we are not inclined to interfere on that aspect.

The appeal is disposed of in the above terms.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.