

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 2258 of 2014 ()

AGAINST THE AWARD IN OPMV 1240/2010 of M.A.C.T.,KOLLAM
DATED 28-07-2012

APPELLANT(S)/PETITIONER :

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1. FARISHA, AGED 47 YEARS
D/O. UBAIDA BEEVI, NADAKKOVIL KIZHAKKATHIL VEEDU,
PALLIMURI, SOORANADU P.O., PORUVAZHY.
 2. IRSHAD, AGED 16 YEARS,
S/O. FARISHA, NADAKKOVIL KIZHAKKATHIL VEEDU,
PALLIMURI, SOORANADU P.O., PORUVAZHY, MINOR
REPRESENTED BY 1ST APPELLANT, MOTHER.

BY ADVS.SRI.PRATHEESH.P
SMT.S.SEETHA

RESPONDENT/2ND RESPONDENT :

THE BRANCH MANAGER,
NATIONAL INSURANCE CO. LTD.,
BRANCH OFFICE
THIRUVALLA-689 601.

BY ADVS. SMT.DEEPA GEORGE
SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

VS

P.B.SURESH KUMAR, J

M.A.C.A.No.2258 of 2014

Dated this the 6th day of February, 2015

JUDGMENT

The claimant in an application for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation.

2. The claimant was a boy aged 12 years. The accident took place on 30.10.2008. He sustained severe injuries including fracture and dislocation of his right ankle with epiphyseal injury. A sum of Rs.1,00,000/- was claimed, in the circumstances, by way of compensation in the proceedings. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to a sum to Rs.32,600/- and accordingly, an award for the said amount was passed. Since the vehicle involved in the accident was covered by a valid insurance policy, the insurer of the vehicle was directed to satisfy the award. The claimant is aggrieved by the quantum of compensation granted to him and hence this appeal.

3. Heard the learned counsel for the appellants

and the learned counsel for the respondent.

4. The Tribunal noticed from Ext.A2 wound certificate and Ext.A7 discharge card that the claimant sustained fracture and dislocation of his right ankle with epiphyseal injury. He sustained other injuries also on other parts of his body. Ext.A7 indicates that he had undergone treatment as inpatient in a hospital for 8 days. Epiphyseal injury being an injury causing separation of a secondary bone formation from a parent bone, it cannot be disputed that the same would result in disability.

5. The claimant has not been granted any compensation for continuing the disability. He was also not granted any compensation for loss of his earning capacity. In the nature of the injuries sustained by him, according to me, the claimant is entitled to compensation for continuing the disability. In the absence of any disability certificate, I deem it appropriate to fix the compensation payable to the claimant for continuing the disability at Rs.10,000/-. For the loss of amenities and enjoyments in life, it is seen that the claimant was granted

only a sum of Rs.8,000/-. According to me, in the nature of the injuries sustained, he is entitled to a further sum of Rs.12,000/- towards compensation for loss of amenities and enjoyments in life. Though it is not disputed that the claimant was admitted and treated as inpatient in a hospital for 8 days, the Tribunal has granted only a sum of Rs.1,600/- towards bystander's expenses. According to me, the accident being one of the year 2008, the claimant is entitled to a further sum of Rs.1,000/- on that head. Likewise, for the extra nourishment, the claimant is seen granted only a sum of Rs.1,000/-. On the facts of this case, he is entitled to a further sum of Rs.2,000/- towards extra-nourishment. Thus altogether, the claimant is entitled to a further sum of Rs.25,000/-.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.25,000/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest also for the enhanced compensation at the same rate at which the interest was awarded by the

Tribunal for the compensation granted, except for the period of delay in filing the appeal, viz., 640 days, as ordered in C.M.Appln. No.2604 of 2014.

Sd/-
P.B.SURESH KUMAR
JUDGE

/TRUE COPY/

PA TO JUDGE

VS