

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

MACA.No. 707 of 2008 ()

AGAINST THE AWARD IN OPMV 1510/2002 of M.A.C.T.,PERUMBAVOOR DATED 20-06-2007

APPELLANT/PETITIONER IN OP(MV):1510/2002::

JOSE P.V., AGED 30 YEARS,
S/O.VARGHESE, PUTHUSSERY HOUSE, VAZHACHAL
KARUKUTTY P.O.,ANGAMALY VIA, ERNAKULAM DIST.

BY ADVS.SRI.V.K.GOPALAKRISHNA PILLAI
SRI.GOPAKUMAR G. (ALUVA)

RESPONDENTS/RESPONDENT 1 TO 3 IN OP(MV):1510/2002;:

*DELETED 1. CELESTINA V.P., W/O.GEORGE,
SHELTER, X/299 B, ENGINEERING COLLEGE P.O.
TRICHUR DISTRICT.

*DELETED 2. GEORGE, S/O.SCARIA, ANJILYVELY HOUSE,
H.NO.VII/562, PLAKKAD MUNICIPALITY
PLAKKAD DISTRICT.

*RESPONDENT NOS.1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF
APPELLANT AS PER ORDER DTD 6.06.2013 IN I.A.1404/2013 IN MACA NO.707/2008.

3. UNITED INDIA INSURANCE CO. LTD.
BRANCH OFFICE, KURUPPAM ROAD, TRISSUR
TRISSUR DISTRICT.

R3 BY ADV.SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AV

C.R.

**P.N.RAVINDRAN
&
BABU MATHEW P.JOSEPH, JJ.**

M.A.C.A.No.707 of 2008

Dated this the 16th day of September, 2015.

J U D G M E N T

Babu Mathew P.Joseph, J.

The appellant, who as a pedestrian, sustained serious injuries in a motor accident that occurred on 05.05.2002 involving a car. He preferred a petition before the Motor Accidents Claims Tribunal, Perumbavoor, claiming compensation on account of the injuries sustained by him in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence of the driver of the car as well as the contributory negligence of the appellant and arrived at a total compensation of ₹ 1,21,270/- (Rupees one lakh twenty one thousand two hundred and seventy only). On the basis of the contributed negligence attributed on the part of the appellant, the Tribunal deducted 50% of the compensation so arrived at and directed the third respondent Insurance Company to deposit the balance 50% for paying to the appellant. Challenging the finding of the Tribunal that there was contributory negligence on the part of the appellant and dissatisfied with the quantum of compensation arrived at by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent Insurance Company. The respondents 1 and 2 remain deleted from the party array.

3. The appellant lost four upper middle incisors and sustained fracture of four middle lower incisors in the accident. There was bleeding from the nose. There was a small lacerated wound over the medial end of left eyebrow. Abrasions on the left thigh, leg, foot, forehead, right side of lower chest and left knee were there. Flexion of the hip was painful and difficult for him after the accident. His mandible was fractured. Head of the left fibula was fractured. Inferior and superior pubic rami on the left side were also fractured. He was taken to the Medical Trust Hospital, Ernakulam, after the accident. He was treated there as an inpatient from 05.05.2002 to 14.06.2002. He was again admitted to that Hospital on 16.07.2002 and treated as an inpatient till 09.08.2002. This time he was admitted to the Hospital for arthroscopy of his left knee. Arthroscopy assisted anterior cruciate ligament reconstruction was done. Bone graft was also done under spinal anaesthesia on 19.07.2002.

4. The petitioner claimed that he was working with a building contractor earning a daily wage of ₹160/-. For want of sufficient

proof, the learned Tribunal did not accept that case and reckoned his monthly income during the relevant period as ₹2,000/-. This, we find, is insufficient. The accident in this case occurred on 05.05.2002. Going by the ground realities supported by rulings rendered by the Honourable Supreme Court, we fix the monthly income of the appellant, during the relevant period, at ₹3,000/- for the purpose of awarding compensation under the head of loss of earnings. On considering the serious nature of injuries as well as long period of inpatient as well as outpatient treatments, we are of the view that the appellant could not have earned any income after the accident for a period, at least, of six months. Therefore, he is entitled to ₹18,000/- in the place of ₹8,000/- fixed by the Tribunal. The appellant was aged only 24 at the time of accident. Therefore, a projected amount of ₹4,500/- can be reckoned as his monthly income taking into account the better future prospects in relation to his income, for the purpose of awarding compensation under the head of permanent disability. The Medical Board of the General Hospital, Ernakulam, has examined the appellant and certified that he has a permanent whole body disability of 15%. The Orthopaedic Surgeon, who was a member of the said Medical Board, was examined as PW2. Even then, without assigning any acceptable reason, the learned Tribunal has taken into account only 8%

permanent disability for the purpose of awarding compensation. The finding so entered by the learned Tribunal has no legs to stand in the light of the disability certificate issued by the Medical Board and supported by the evidence of the doctor who was a member of that Medical Board. We accept the permanent whole body disability of the appellant as 15%. The multiplier which can be adopted in this case is 17. When the loss of earning power is calculated applying the said multiplier which works out at ₹1,37,700/- ($₹4500 \times 12 \times 17 \times 15 / 100$). We allow the said amount in the place of ₹32,640/- allowed by the Tribunal. We also enhance the amount of ₹15,000/- allowed by the Tribunal under the head of loss of amenities to ₹20,000/-. The Tribunal has not awarded any amount on account of loss of four upper middle incisors and fracture of four lower middle incisors. Since the appellant was aged only 24, the loss of teeth as well as the fracture of his teeth, definitely, seriously affect him. On considering this aspect of the matter, we award an amount of ₹35,000/-. We do not find any reason to interfere with the amounts fixed by the Tribunal under other heads. Thus, the total additional amount of compensation fixed in this judgment comes to ₹1,55,060/- (Rupees one lakh fifty five thousand and sixty only).

5. The Tribunal deducted 50% of the amount arrived at as

compensation finding contributory negligence on the part of the appellant. The reasons stated for finding contributory negligence are : (1) The appellant was crossing the road at the time of accident and then he was on the middle of the road. (2) It is noted in the wound certificate of the appellant that 'Smell of alcohol present in breath'. The finding entered by the learned Tribunal that there was contributory negligence on the part of the appellant cannot be accepted for reasons. It is a common law right of every citizen of this country to use the public streets. It is only usual and necessary for the citizens to use the road for walking, crossing from one side to the other and in many other ways. While using the road in those ways by the citizens, a driver is not entitled to drive his vehicle negligently so as to injure those citizens. A driver should take that much care while driving the vehicle so as to avoid any possible or probable accident on the road. Had the driver of the car involved in this accident taken the required care, the accident would not have occurred. Therefore, the negligence on the part of the driver of the car alone had caused the accident.

6. The entry made by the doctor in the wound certificate that smell of alcohol was present in the breath of the appellant cannot be a reason for finding that he was under the influence of alcohol rendering him unable to keep himself proper and stable and

contributing to the cause of accident. Drinking of alcoholic beverages is not a prohibited thing in this democratic country. But the crucial question is as to whether after drinking alcohol, the appellant had actually contributed to the cause of accident by his deeds while using the road. Here, there is absolutely no evidence to show that he was under the influence of alcohol or he had contributed to the cause of accident. For these reasons, the finding entered by the learned Tribunal that there was contributory negligence on the part of the appellant cannot be accepted. We vacate that finding. Therefore, the deduction of 50% effected by the Tribunal from the total amount of compensation arrived at is unsustainable. The appellant is entitled to the total amount of compensation arrived at by the Tribunal as well as by this Court.

7. Thus, the appellant is entitled to a total compensation of ₹2,76,330/- (Rupees two lakh seventy six thousand three hundred and thirty only) under various heads. The additional amount of ₹1,55,060/- granted by this Court in this judgment shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The amount of ₹1,21,270/- arrived at by the learned Tribunal shall carry interest at the rate directed by the Tribunal in its Award. The 3rd respondent Insurance Company shall deposit the amount within 30 days from the date of receipt of

M.A.C.A.No.707 of 2008

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a copy of this judgment.

This appeal is allowed as above.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE

AV

/True Copy/

P.A to Judge