

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 1703 of 2010 ()

(AGAINST THE AWARD IN OPMV 1445/2006 of M.A.C.T., KOZHIKODE
DATED 14-10-2009)

APPELLANT/PETITIONER:

JOSE PAUL
RESIDING AT PRAKKUDIYIL HOUSE, VELAMKODE POST
KODANCHERY-VIA, KOZHIKODE.

BY ADV. SRI.V.S.CHANDRASEKHARAN

RESPONDENTS/RESPONDENTS:

**** 1. AHAMAD HAJI**
NADUKKANDY HOUSE, PAYYOLI POST, MELADI
KOZHIKODE, PIN-673 001.

(**DELETED FROM THE PARTY ARRAY AS PER THE ORDER DATED 02.01.2014
IN I.A.No. 3357 of 2013)

2. SALAM, S/O.HAMZA, AGED 25 YEARS,
RESIDING AT CHURAPRA HOUSE, VENAPARA POST
KODATHAI AMSOM, PERUVILLI, KOZHIKODE
PIN-673 001.

3. THE UNITED INDIA INSURANCE CO.LTD,
DIVISIONAL OFFICE, WHITE LINES BUILDING, KALLAI
KOZHIKODE, PIN-673 001.

R-2 BY ADV. SRI.R.SUDHISH
R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**P.R. RAMACHANDRA MENON
&
K. HARILAL, JJ.**

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M.A.C.A.No.1703 OF 2010
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Dated this the 29th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J:

A 32 year old youth, who is stated as a rubber tapper, sustained serious injuries while walking along the road on 07.01.2006, when he was knocked down by a jeep bearing No.KL.11/E.5652 , owned by the first respondent, driven by the second respondent and insured by the third respondent. The extent of injuries sustained by the appellant necessitated hospitalisation of five different spells, coming to the total of 93 days . The extent of disability was certified by the Medical Board vide Ext.C1 as 40%. A claim petition was filed for a total sum of Rs.Four lakhs. After considering the materials on record, the Tribunal awarded a total sum of Rs.295895/- with interest at the rate of 7% per annum. Being aggrieved of inadequacy of compensation, the petitioner has approached this Court by filing

this appeal.

2. Heard the learned counsel for the appellant as well as the learned Standing Counsel for the Insurance Company.

3. The injuries sustained by the appellant as discussed in paragraph '9' of the judgment are in the following terms:

“Fracture of the shaft femur (L) lower 1/3rd, lacerated wound (R)right popliteal fossa and knee joint dislocation.”

The various spells of hospitalisation are detailed below:

i) From 8.1.2006 till 15.02.2006 admitted to Medical College Hospital, Kozhikode.

ii) from 30.10.2006 to 22.11.2006 - admitted to the Medical Trust Hospital, Ernakulam, (with implant failure)

iii) From 18.12.2006 to 01.01.2007 admitted to the Medical Trust Hospital, Ernakulam for removal of implant.

iv) From 09.03.2007 to 19.03.2007 admitted to the Medical Trust Hospital, Ernakulam for removal of proximal ring

v) From 19.05.2007 to 20.05.2007 admitted to the Medical Trust Hospital, Ernakulam for removal of proximal ring.”

The treatment itself, according to the appellant, was to the tune of Rs.68823/-, out of which a sum of Rs.55645/- was awarded by the Tribunal. The split up figures of the total compensation of Rs.295895/- as given in paragraph '12' of the award are in the following terms:

Head	Amount awarded by the Tribunal
Transport to hospital	2500
Damage to clothing	250
Loss of earnings	9000
Bystander's expenses	4500
Treatment expenses	55645
Pain and suffering	20000
Loss of amenities	204000
TOTAL	295895

4. After hearing both the sides, eventhough no separate evidence was adduced as to the employment or the monthly income of the appellant, considering the fact that the accident

occurred was in the year 2006 and that the appellant was a 32 year old youth, we find that the same is on the lower side. Considering the various judgments passed by the Apex Court at different points of time and taking a pragmatic view with regard to such aspects, we find it appropriate to fix the notional monthly income as Rs.4000/- so as to work out the compensation in this regard.

5. The nature and extent of injuries reveal that the appellant was not in a position to go for work at least for six months and as such, the loss of income comes to Rs.24000/- (4000 x 6). After giving credit to the sum of Rs.9000/- awarded by the Tribunal, the balance is **Rs.15000/-**. The compensation for permanent disability is not seen worked out by the Tribunal. The Tribunal has however added the figure of Rs.2,04,000/- towards loss of amenities to make the total as Rs.295895/-. On working out compensation, reckoning the monthly income as Rs.4000/-, the extent of disability certified by the Medical Board vide Ext.C1 as 40% and appropriate multiplier going by the

principles and parameters laid down by the Apex Court as per the decision in **Sarla Verma vs. Delhi Transport Corporation** [2009(6) SCC 121] , the compensation payable for the disability comes to Rs.3,07,200/ (4000 x 12 x 16 x 40/100). Considering the nature and gravity of injuries and sufferings undergone by the appellant involving five different spells of hospitalization, this Court finds it fit and proper to grant a sum of Rs.30000/- towards loss of amenities. The amount under these two heads jointly comes to Rs.337200/-. After giving credit to the sum of Rs.204000/- awarded by the Tribunal (wrongly describing it as towards the loss of amenities), the balance comes to **Rs.103200/-**. Similarly, the pain and suffering also requires to be enhanced and the same will stand boosted up to Rs.30000/-, resulting in a balance sum of **Rs.10000/-** under this head as well. Thus the total balance compensation payable comes to **Rs.1,28,200/-** (Rupees one lakh twenty eight thousand and two hundred only), which shall be satisfied with interest at the rate of 9% per annum from the date of petition, till the date of

satisfaction. Since the policy stands admitted, we direct the Insurance Company to satisfy the said amount within one month from the date of receipt of a copy of the judgment.

The appeal stands disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE**

**K. HARILAL,
JUDGE**

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