

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

MACA.No.748 of 2008 (A)

AGAINST THE AWARD IN OPMV 642/1998 of M.A.C.T., KOZHIKODE
DATED 26-07-2007

APPELLANT/CLAIMANT:

BIJU.K, S/O (LATE) SAMI,
AGED 24 YEARS, KOOLICHALAYIL HOUSE, KUNNAMANGALAM
KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS:

1. T.SASIDHARAN, S/O BICHUNNY,
KAYTHOOR HOUSE, KAYAKKODU AMSOM, MANASSERY POST
KOZHIKODE.

2. THE NEW INDIA INSURANCE CO. LTD.,
1ST FLOOR, VARIKANDAN BLDGS., NILAMBUR ROAD
MANJERY, MALAPPURAM.

R2 BY ADV. SRI.M.RAJAGOPALAN

R2 BY ADV. SRI.RAJIT

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M. A. C. A. No.748 of 2008

Dated this the 14th day of September, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant sustained serious injuries in a motor accident that occurred on 01-12-1997 involving an autorickshaw driven and owned by the first respondent and insured with the second respondent. He has preferred a petition before the Motor Accidents Claims Tribunal, Kozhikode, claiming compensation on account of the injuries sustained in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the first respondent and awarded a total compensation of ₹31,200/- under various heads as follows:

Medical bills - ₹ 2,342/-

Incidental charges - ₹ 1,500/-

Pain and sufferings	-	₹ 9,000/-
Disability	-	₹ 15,360/-
Loss of earnings	-	₹ 2,500/-
Transportation	-	₹ 500/-
Total	-	----- ₹ 31,202/- =====

(Rounded to ₹ 31,200/-)

The second respondent was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded 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 second respondent Insurance Company. Notice to the first respondent remains dispensed with.

3. The appellant sustained grade-I compound fracture of the shaft of his left femur and grade-I compound fracture of the middle third of his left humerus. He also sustained multiple soft tissue injuries in the accident. He was initially treated by K-Nailing and wound debridement. He had

undergone inpatient treatment at the Medical College Hospital, Kozhikode, from 01-12-1997 to 27-12-1997. He has, thereafter, continued outpatient treatments on different occasions up to 06-08-1998. He was a mason aged 24 at the time of accident.

4. The learned Tribunal found that the appellant was earning a monthly income of ₹1,000/- during the relevant period. This, we find, is insufficient. Based on probabilities, we find that he was earning a monthly income of ₹2,500/- during the relevant period. The serious nature of the injuries suffered by the appellant and long period of inpatient as well as outpatient treatments persuade us to find that he could not have earned income after the accident at least for a period of eight months. Therefore, we award ₹20,000/-, in the place of ₹2,500/- awarded by the Tribunal, as compensation for loss of earnings. The Tribunal has awarded ₹1,500/- towards incidental charges. We take it as awarded under the head of expenses for bystander and for extra

nourishment. The amount awarded under this head is insufficient. Therefore, we enhance the same to ₹5,000/-. The Tribunal has awarded ₹9,000/- towards compensation for pain and suffering. On considering the serious nature of injuries sustained as well as the long period of treatments, we are of the view that the amount awarded under this head is also liable to be enhanced. Therefore, we award ₹20,000/- under this head in the place of ₹9,000/- awarded by the Tribunal. ₹500/- awarded towards expenses for transport is enhanced to ₹1,500/- in view of the fact that the appellant repeatedly went to the Medical College Hospital, Kozhikode, for follow up treatments.

5. The appellant has claimed 18% occupational disability by producing the Disability Certificate. But, such a claim has not been proved properly before the Tribunal. Therefore, for the reasons stated in the award, the learned Tribunal accepted only 8% as the disability. We find no reason to deviate from the quantum of disability so

reckoned by the learned Tribunal. The appellant was aged 24 at the time of accident. Therefore, the multiplier applicable in this case will be 18. We have already found that he was earning a monthly income of ₹2,500/- during the relevant period. Therefore, applying the multiplier of 18, the loss of earning power works out at ₹43,200/- ($₹2,500/- \times 12 \times 18 \times 8/100$). We allow the same in the place of ₹15,360/- awarded by the Tribunal. On considering the serious nature of injuries sustained by the appellant and the resultant loss of amenities, we award ₹15,000/- towards compensation for loss of amenities. Thus, the appellant is entitled to an additional amount of ₹75,840/- (Rupees seventyfive thousand eight hundred and forty only) as compensation over and above the amount awarded by the Tribunal. The said amount of ₹75,840/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The second respondent Insurance Company shall deposit the amount within 30 days from the date of receipt

of a copy of this judgment.

This appeal is allowed in part as above.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE