

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

MACA.No. 2410 of 2014 ()

AGAINST THE AWARD IN OPMV 580/2010 of M.A.C.T.,
KOZHIKODE, DATED 27-08-2011.

APPELLANT/PETITIONER:-

JITHIN K MOHAN, AGED 19 YEARS
S/O.RADHAKRISHNAN, RESIDING AT KOTTAKAPURATH (H)
P.O.KAKKAD, & DESOM, KOZHIKODE - 673 586.

BY ADV. SRI.V.S.CHANDRASEKHARAN

RESPONDENTS/RESPONDENTS:-

1. MOHAMMED ASHRAF.C.,
S/O.MUHAMMED, RESIDING AT CHEENIYULLATHIL HOUSE
POOTHOTTAMPOYIL, PUDUPPADY, KOZHIKODE - 673 586.

2. THE ORIENTAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, JYOTHI SUPER BAZAAR
THODUPUZHA - 685 584.

R2 BY ADV. SMT.A.SREEKALA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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M.A.C.A. No.2410 of 2014

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Dated this the 17th day of March, 2015.

J U D G M E N T

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted by the Tribunal.

2. The claimant was a student. The accident took place on 24.5.2009. The claimant was aged 19 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.58,209/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. The Tribunal found that the claimant sustained fracture

of the shaft of the right femur and fracture both bones of right leg in the accident. The Tribunal also found that the claimant had undergone inpatient treatment in the hospital for 28 days. The Tribunal further found that in the course of treatment, the claimant had to undergo a surgical procedure on 3.6.2009. Ext.C1 is the disability certificate issued to the claimant by the Medical Board certifying his permanent disability at 5%.

5. The Tribunal had granted a sum of Rs.19,200/- towards compensation for continuing permanent disability, reckoning the notional income of the claimant at Rs.2,000/- and applying the multiplier '16'. Since the accident took place in the year 2009, according to me, the notional income of the claimant should have been reckoned at Rs.4,000/-. The claimant is, therefore, entitled to a further sum of Rs.19,200/- towards compensation for continuing permanent disability. Despite the injuries referred to above, the Tribunal had granted only a sum of Rs.6,000/- towards loss of amenities and enjoyments in life. In the nature of the injuries sustained by the claimant, according to me, he is entitled to a further sum of Rs.4,000/- towards loss of amenities and enjoyments in life. Towards extra nourishment, it is seen that the Tribunal had granted only a sum of Rs.1,000/-.

Since the claimant had undergone inpatient treatment for 28 days, according to me, he is entitled to a further sum of Rs.2,000/- towards extra nourishment. Towards bystander's expenses, the Tribunal had granted only a sum of Rs.4,200/- at the rate of Rs.150/- per day. Since the accident took place in the year 2009, I am of the view that the claimant is entitled to bystander's expenses at the rate of Rs.250/- per day. The claimant is, therefore, entitled to a further sum of Rs.2,800/- towards compensation on that head. Thus, the claimant is entitled to a further sum of Rs.28,000/- towards compensation.

6. It is seen that interest has been granted by the Tribunal for the compensation awarded only at the rate of 7% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.28,000/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz.,

M.A.C.A. No.2410/2014

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994 days as ordered in C.M.Application No.2797 of 2014.

Sd/-P.B.SURESH KUMAR, JUDGE.

Kvs/-

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PA TO JUDGE.