

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

MACA.No. 2158 of 2009 ()

AGAINST THE AWARD IN OPMV 529/1996 of MACT,TRIVANDRUM DATED
14-11-2008

APPELLANT(S)/PETITIONER:

K. BIJU, S/O.N. KUNJUNNI,
KANAVILA CHARUVILAKATHU VEEDU, OORUTTAMBALAM,
MALAYINKEEZHU VILLAGE, NEYYATTINKARA TALUK.

BY ADV. SRI.L.MOHANAN

RESPONDENT(S)/RESPONDENTS:

1. E.A. RASHEED, T.C. 32/1279, POWER HOUSE
ROAD, THIRUVANANTHAPURAM.

2. S. JAYAPRAKASH, T.C. 27/1610, SUMMER LODGE,
PATTOOR, VANCHIYOOR P.O., THIRUVANANTHAPURAM.

3. RAJU JOSEPH, S/O. C.O. JOSEPH,
KANNAM THESIL HOUSE, PALLIPURATHUSSERI P.O., VAIKKAM,
KOTTAYAM DISTRICT.

4. JAYAN , ANIL BHAVAN,
MANNARA, KOITHOORKONAM, POTHENCODE P.O.
THIRUVANANTHAPURAM.

5. KERALA STATE INSURANCE DEPARTMENT,
THIRUVANANTHAPURAM.

6. NATIONAL INSURANCE COMPANY
LIMITED, PUNNEN ROAD, THIRUVANANTHAPURAM.

R5 BY GOVERNMENT PLEADER SMT.ROSE MICHAEL

R6 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

OKB

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

M.A.C.A.No.2158 of 2009

Dated this the 23rd day of September, 2015.

JUDGMENT

Harilal, J.

The appellant is the claim petitioner in O.P(MV) No.529/1996 on the files of the Motor Accidents Claims Tribunal, Thiruvananthapuram. The above OP was originally filed under Sections 163A and 166 of the Motor Vehicles Act and later, converted to Section 166 only by an order passed by the Tribunal on the application filed by the appellant. According to the appellant, on 16.12.1996, while he was working as a cleaner in a tipper lorry, bearing Registration No.KL-01/D-5644, which was engaged in loading and unloading work in a site at Thonnakkal, Mangalapuram, a JCB excavator bearing Registration No.KL-01/E-8532 was also engaged in the same site for removing earth at the site. When he was standing near the lorry, the bucket attached in the JCB turned abruptly towards him, due to the negligent act of the driver-cum-operator of the JCB and hit at his face and, as a result

of the hit, he sustained multiple cranial nerve injuries, which culminated into permanent ophthalmic disability. Respondents 1 and 2 are the owners of the tipper lorry and JCB excavator respectively. Respondents 3 and 4 are the drivers and respondents 5 and 6 are the insurers of the JCB and tipper lorry respectively. According to the appellant, the accident was caused by the rash and negligent driving of the JCB by the 3rd respondent. Hence the 2nd respondent is vicariously liable for the act done by the 3rd respondent and the 5th respondent is liable to compensate the 2nd respondent. Thus, the respondents 2, 3 and 5 are jointly and severally liable to compensate the appellant for the injuries suffered by him. So, he claimed Rs.3 lakhs as compensation.

2. The 1st respondent did not contest the proceedings. But, the 2nd respondent has filed the written statement contending that the appellant has sustained only minor injuries and the compensation claimed is excessive. So also, he denied the allegations of rashness and negligence levelled

against the 3rd respondent. The 3rd respondent filed the written statement contending that the accident happened due to the negligence on the part of the appellant alone. He denied the negligence and rashness attributed against him. According to him, the vehicle was being operated with utmost care and caution. The 4th respondent remained ex parte in the proceedings and the 5th respondent, though entered appearance, did not file written statement. The 6th respondent filed the written statement contending that no accident, as alleged, had taken place and the compensation claimed is exorbitant and unreasonable. As per the averments in the application also, the tipper lorry has not contributed anything to the cause of accident.

3. The evidence consists of the oral evidence of P.Ws.1 to 5 and Exts.A1 to A7 and Ext.X1. After evaluating the evidence on record, the Tribunal has arrived at a finding that the accident was caused by the rash and negligent driving of the JCB by the 3rd respondent and thereby, the 5th respondent is liable to

pay the compensation to the appellant. We do not see any reason to interfere with the said finding in the absence of challenge against those findings by the respondents.

4. This appeal is filed on the ground that the amount of compensation determined under various heads are inadequate and disproportionate with the severity of the injuries and the resultant permanent disability and damages caused to the appellant. The learned counsel for the appellant advanced arguments in support of the grounds raised in the Memorandum of Appeal. According to him, the amount of compensation granted under the heads of permanent disability, loss of earnings, pain and suffering, loss of amenities etc., are inadequate and deserve to be enhanced. Per contra, the learned counsel for the 5th respondent advanced arguments to justify the quantum of compensation determined under the heads referred above.

5. The point to be considered is, whether the quantum of compensation fixed by the Tribunal under the different heads are in conformity with 'just

compensation' contemplated under Section 168 of the M.V. Act. At the time of accident, the appellant was aged 17 years and 9 months only. According to the appellant, he was getting Rs.100/- per day during the period 1996. But, the Tribunal has taken Rs.1,500/- only as his monthly income. Considering the money value and other relevant aspects prevailing during the relevant period, it is just and proper to re-fix the monthly income of the appellant at Rs.2,500/-. Therefore, under the head of 'loss of earnings', the appellant is entitled to get a total compensation of Rs.15,000/- and the balance amount payable is Rs.6,000/- under this head. We further find that the amount granted towards 'transportation to hospital' and 'damage to clothing' are inadequate and the same deserve to be enhanced to Rs.1,500/- and Rs.500/- respectively, and the balance payable under these heads is Rs.1,000/-.

6. Coming to the compensation for 'loss of permanent disability', the Tribunal granted Rs.28,800/- only by taking Rs.1,500/- only as monthly income. On

re-working the compensation under this head, taking Rs.2,500/- as his monthly income, the appellant is entitled to get a total compensation of Rs.48,000/- and the balance payable under this head is Rs.19,200/-.

7. Going by Ext.A1 discharge card issued by the Government Medical College Hospital, Thiruvananthapuram, it is seen that he was admitted on 16.2.1996 and discharged on 7.3.1996. It shows that the appellant was admitted with a history of traumatic ear and he was drowsing at the time of admission. Left eye pupil was dilated and there were bodily injuries including fracture. Neurosurgery is also seen to have been done for the injuries sustained by the appellant. It is also indicated that sensory nerves were impaired. The Doctor, in his evidence, stated that the appellant, on examination, was noted with vision as 6/36 which was less than the normal vision and there were paralysis of 3rd, 4th, 5th, and 7th nerves. Considering the severity of the injuries sustained, as shown above, we find that the appellant was deprived of the normal comforts of a normal person, for a considerable period and, in that

view, Rs.14,400/- fixed towards 'loss of amenities' is inadequate and the same would stand enhanced to Rs.25,000/-. After giving credit to the amount granted by the Tribunal, the balance payable under this head is Rs.10,600/-.

Thus, the appellant is entitled to get an amount of Rs.36,800/- (Rupees Thirty six thousand and eight hundred only) in addition to the amount specifically quantified in the operative portion of the impugned award. It is made clear that the appellant is entitled to get interest @ 9% per annum for the enhanced compensation. The 5th respondent/Insurance Company is directed to deposit the total compensation within a period of one month from the date of receipt of a copy of this judgment.

The appeal is disposed of as above.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.