

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

MACA.No. 2504 of 2014

**OP(MV) 854/2009 OF PRINCIPAL MOTOR ACCIDENTS CLAIMS TRIBUNAL,
KOZHIKODE.**

.....

APPELLANT/PETITIONER:

**RUKHIYA, W/O.ABDURAHIMAN(LATE)
AGED 40 YEARS, RESIDING AT
KARUVARAPATTA HOUSE, P.O.NIT,
CHATHAMANGALAM AMSOM,
PULLAVOOR DESOM, KOZHIKODE.**

**BY ADVS.SRI.V.S.CHANDRASEKHARAN
SMT.LEKSHMI SWAMINATHAN**

RESPONDENTS/RESPONDENTS:

- 1. ALI AKBAR, S/O.MUHAMMEDALI, AGED NOT KNOWN,
AT AKBAR MANZIL, PULLIKKAL PARAMBU,
P.O.ARAKKINAR, KOZHIKODE - 673 028.**
- 2. THE NEW INDIA ASSURANCE CO.LTD.,
DIVISIONAL OFFICE, SILVER PLAZA BUILDING,
I.G.ROAD, KOZHIKODE - 673 028.**

**R2 BY ADVS. SRI.RAJESH THOMAS
SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A1 : MEMO DATED 27.5.14 ISSUED BY ADV.RASHMI.K.V. TO SRI.SANTHOSH KUMAR K.P., ADVOCATE CLERK.
- ANNEXURE A2 : REPLY ISSUED BY SRI.SANTOSH KUMAR K.P ADVOCATE CLERK DATED 3.5.14.
- ANNEXURE A3 : LETTER ISSUED TO SRI.ANIL THOMAS, ADVOCATE BY ADV.RASHMI.K.V DATED 2.6.14.
- ANNEXURE A4 : MEMO ISSUED BY ADV.ANIL THOMAS TO SRI.SANTOSH KUMAR.K.P, ADVOCATE CLERK DATED 3.6.14.
- ANNEXURE A5 : LETTER ISSUED BY ADV.ANIL THOMAS TO THE REGISTRAR HIGH COURT OF KERALA DATED 4.6.2014.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

P.B.SURESH KUMAR, J.

M.A.C.A.No.2504 of 2014

Dated this the 30th day of June, 2015

JUDGMENT

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 aged 40 years at the time of accident. The accident took place on 7.12.2007. 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.21,305/- 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. Ext.A2 is the wound certificate of the claimant. Ext.A4 is the discharge card issued to the claimant from the hospital where she was treated in connection with the injuries sustained in the accident. From Exts.A2 and A4, the Tribunal found that the claimant sustained fracture of inferior pubic ramus (L) in the accident. The Tribunal also found that she had undergone inpatient treatment in the hospital from 7.12.2007 to 14.12.2007.

5. Coming to the quantum of compensation, the Tribunal granted only a sum of Rs.3,750/- towards loss of earnings for a period of 1½ months, reckoning the monthly income of the claimant at Rs.2,500/-. Since the accident took place in the year 2007, the monthly income of the claimant should have been reckoned by the Tribunal at the rate of Rs.4,500/-. Further, having regard to the fracture sustained by the claimant, I am of the view that the

claimant should have been granted compensation for loss of earnings at least for a period of three months. The claimant is therefore, entitled to a further sum of Rs.9,750/- towards compensation for loss of earnings. Towards pain and sufferings, the Tribunal has granted only a sum of Rs.10,000/-. Having regard to the nature of the injury sustained by the claimant, I am of the view that she is entitled to a minimum of Rs.15,000/- on that head. The claimant is therefore, granted a further sum of Rs.5,000/- towards pain and sufferings. Towards loss of amenities and enjoyments in life, only a sum of Rs.3,000/- is seen granted by the Tribunal. On an evaluation of the materials on record, I am of the view that the claimant is entitled to a further sum of Rs.7,000/- on that head. Further, it is seen that only a nominal amount of Rs.300/- was granted towards extra nourishment. Considering the facts of this case, I am of the view that the claimant is entitled to a further sum of Rs.1,700/- towards extra nourishment as well. Thus, the claimant is entitled to a further sum of Rs.23,450/- 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.23,450/- 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., 1419 days as ordered in C.M.Application No.2897 of 2014.

P.B.SURESH KUMAR, JUDGE.

smm