

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

MACA.No. 2537 of 2014 (C)

**AGAINST THE AWARD IN O.P.(MV)No.891/2003 OF THE HONOURABLE PRINCIPAL
MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 01-10-2007**

APPELLANT/PETITIONER :-

**KUTTAYI, S/O.IMBICHIKUTTY, AGED 94,
KARUVANCHERI (H), KODAL NADAKKAVU,
P.O. PANTHEERANKAVU, KOZHIKODE.**

BY ADV. SMT.K.V.RASHMI

RESPONDENT/3RD RESPONDENT :-

**UNITED INDIA INSURANCE CO. LTD.,
SOUTHERN BLOCK,
VADAKKAMETHIL TOWERS,
PRIVATE BUS STAND ROAD,
PERUMBAVOOR - 683 542.**

**R BY ADVS. SRI.A.A.MOHAMMED NAZIR
SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 01-04-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

P.B. SURESH KUMAR, J

M.A.C.A.No. 2537 of 2014

Dated this the 1st day of April, 2015

JUDGMENT

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

2. The claimant was aged 83 years at the time of accident. The accident took place on 24.01.2003. A sum of ₹60,000/- was claimed in the petition by way of compensation. The Tribunal though found that the claimant is entitled to a sum of ₹5,000/-, passed an award only for a sum of ₹4,000/-, holding that the accident occurred on account of the negligence of the claimant as well.

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

4. Neither the claimant nor the insurer adduced oral evidence in the proceedings. Ext.A1 is the First Information Report in the crime registered in connection with the accident. It is seen that the crime was

registered against the second respondent, who was driving the vehicle involved in the accident. There is nothing on record to indicate that the claimant has contributed in any manner whatsoever to the cause of the accident. The Tribunal has taken the view that since the claimant was walking through the public road at the time of accident, negligence has to be presumed on his part as well. I do not agree. In the absence of any evidence, merely for the reason that the claimant was walking through the public road at the time of accident, it cannot be presumed that the accident occurred on account of the negligence of the claimant as well.

5. Coming to the quantum of compensation, as noticed above, only a consolidated amount of ₹4,000/- has been granted to the claimant. Ext.A2 is the wound certificate produced by the claimant before the Tribunal. Ext.A3 is the reference card issued to the claimant from the Medical College Hospital, Kozhikode. It is seen from Ext.A3 that the claimant sustained fracture of fibula and fracture of the neck of scapula in the accident. It is also

seen that claimant was admitted and treated in the hospital for six days in connection with the injuries sustained by him in the accident. In such circumstances, having regard to the age of the claimant, I am of the view that the claimant should have been granted at least ₹15,000/- towards the compensation for pain and sufferings. Likewise, the claimant being a person aged 83 years, in the nature of the injuries sustained by him, he should have been adequately compensated for loss of amenities and enjoyments in life as well. According to me, a sum of ₹15,000/- should have been granted to the claimant on that head. In addition, according to me, a further sum of ₹2,000/- is to be given to the claimant towards extra nourishment and a sum of ₹1,200/- is to be given to the claimant towards bystander's expenses. Thus, the claimant is entitled to a total sum of ₹33,200/-. Since the Tribunal has granted a sum of ₹4,000/-, he is entitled to an additional compensation of ₹29,200/-.

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.

7. In the result, the appeal is allowed in part. The finding of the Tribunal that the accident occurred on account of the negligence of the claimant as well is vacated. The compensation granted by the Tribunal is modified granting a further sum of Rs.29,200/- 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., 2035 days as ordered in C.M.Application No.2935 of 2014.

Sd/-
P.B. SURESH KUMAR
JUDGE

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P.A. TO JUDGE