

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

MACA.No. 2591 of 2014 ()

AGAINST THE AWARD IN OPMV 1625/2012 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUHAL, KOLLAM DATED 20-08-2014

APPELLANT/PETITIONER:-:

SUMATHYKUTTY AMMA, AGED 57 YEARS
W/O.RAGHAVAN PILLAI, PANTHANTIZHIKOM VEEDU
MAHADEVA NAGAR 139, VALATHUNGAL, ERAVIPURAM.

BY ADVS.SRI.PRATHEESH.P
SRI.SEETHA.S

RESPONDENT/2ND RESPONDENT:-:

THE DIVISIONAL MANAGER,
THE NATIONAL INSURANCE CO. LTD., KOLLAM - 691 001.

R1 BY ADV. SRI.P.G.GANAPPAN
R BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,**

M.A.C.A. No.2591 of 2014

Dated this the 5th day of January 2015

JUDGMENT

Ramachandran Nair, J.,

This appeal is filed by the claimant aggrieved by the award passed by the Motor Accidents Claims Tribunal, Kollam in O.P. (MV) No. 1625/2012. She sustained injuries in an accident which occurred on 3.2.2012 at about 8.30 a.m. While she was walking as a pedestrian, a motor cycle bearing Registration No. KL-2/AH 2845 hit her at a place called Kalarivathukkal junction in Koottikkda-Thirumukku public road.

2. As against a claim of total compensation of Rs.1,50,000/-, the Tribunal awarded only an amount of Rs. 49,987/- with interest @ 9% per annum from the date of petition.

3. We heard the learned counsel for the appellant and learned Counsel for the Insurance Company.

4. According to the learned counsel for the appellant, the award cannot be justified as compensation has been inadequately awarded. According to the learned counsel, the appellant had continued treatment even after discharge from the

hospital. It is also submitted that towards loss of earning power, and disability sustained, the Tribunal granted the amount at a very low level.

5. Learned counsel for the Insurance Company submitted that the award is perfectly justified in the absence of production of any disability certificate and in the absence of any evidence to show that there is functional disability. It is also submitted that the claimant was not examined before the Tribunal to support the case of continued disability if any.

6. We find from the award that in the absence of any evidence Rs. 3,000/- is taken as the monthly income. She claimed to be a cashew worker and was aged 60 at the time of accident. Even though, Rs. 6,000/- is claimed not even proof affidavit has been filed. Therefore, the Tribunal had no other way than to fix it at Rs. 3,000/- notionally. It cannot said it to be too low. Towards partial loss of earning, Rs.6,000/- viz., for two months has been granted. Going by the evidence before the Tribunal, she was admitted as inpatient only for a period of five days. It is true that she sustained fracture on both bones of right leg. Paragraph 16 shown that the treatments given are splint bandaging as shown by Ext.A7 and 7 hole LCP inserted

through MIPPO technique on medial side of right leg. The Tribunal has observed that there are no records of any continued or prolonged treatment or any complication. We have not been told of any other records showing continued treatment. Therefore, the said finding is perfectly justified.

7. Towards pain and suffering, Rs. 20,000/- has been granted, towards bystander expenses Rs.1,500/- and towards medical expenses Rs. 11,677/- has been granted. For loss of earning power Rs.7560/- has been granted, even by assessing the functional disability as 3%. In the absence of disability certificate, showing percentage of disability, we will not be justified in granting any enhancement, towards disability. In the light of the above, we find that that award is reasonable and we find no reason to interfere with it.

Accordingly, the appeal is dismissed.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-

P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge

M.A.C.A. No.2591 of 2014

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fair 6.1.2015