

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

MACA.No. 2612 of 2014

**O.P.(MV)NO.1721/2007 OF THE PRL. MOTOR ACCIDENTS CLAIMS TRIBUNAL,
KOZHIKODE DATED 22-10-2009**

APPELLANT(S)/PETITIONER :

**V.ABDUL RAHIMAN, AGED 76 YEARS,
S/O.VEERAN, VAKAPURATH HOUSE, (P.O) NALLALAM,
KOZHIKODE.**

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S)/3RD RESPONDENT :

**KERALA STATE INSURANCE DEPARTMENT,
DISTRICT INSURANCE OFFICE, WOOD WORKSHOP BUILDING,
PUTHIYARA, KOZHIKODE- 673 004.**

BY GOVERNMENT PLEADER SRI.T.I.MICHAEL

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

P.B.SURESH KUMAR, J.

M.A.C.A.No.2612 of 2014

Dated this the 24th day of June , 2015

JUDGMENT

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

2. The claimant is a coolie. He was aged 69 years at the time of accident. The accident took place on 15.3.2007 involving a vehicle owned by the first respondent and driven by the second respondent. The third respondent was the insurer of the vehicle. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal though found that the claimant is entitled to a sum of Rs.28,582/- by way of compensation, passed an award permitting the claimant to recover only a sum of Rs.21,437/- from the third respondent on the ground that the negligence of the claimant has also contributed for the cause of the

accident. The claimant is aggrieved by the said decision of the Tribunal.

3. Heard the learned counsel for the appellant as also the learned Government Pleader for the respondent.

4. As stated above, the Tribunal found that the negligence of the claimant has also contributed for the cause of the accident. Paragraph 7 of the award dealing with the said finding reads thus:

“According to the counsel for the 3rd respondent, Ext.A2 wound certificate shows that accident was occurred when petitioner was crossing the road. Therefore, according to him, there is negligence on the part of the petitioner. Ext.A7 would show that the place of occurrence is 3 meter east from the western tar road having a width of 13 meters. Therefore it could be seen that case of the petitioner that jeep hit him when he was standing on road side in front of post office road is incorrect. At the same time, considering the width of the road and place of occurrence it could be seen that there is contributory negligence on the part of the petitioner and his negligence is fixed as 25%.”

It is seen that the Tribunal has arrived at the said finding for the sole reason that the accident took place at three meters

east from the western tarred end of the road having a width of 13 meters. According to the Tribunal, since the accident took place at the aforesaid place, the case of the claimant that the vehicle hit him when he was standing on the side of the road cannot be believed and that it must be taken that the accident took place when the claimant was attempting to cross the road. I do not agree with the said reason given by the Tribunal. Merely for the reason that a person was crossing the road, negligence cannot be attributed to him. Further, the finding of the Tribunal that the scene of occurrence was three meters east from the western tarred end of the road is based on Ext.A4 scene mahazar. Scene mahazar is a document prepared after the occurrence. The place of occurrence as recorded in the scene mahazar may or may not be correct. Further, Ext.A4 scene mahazar has not been proved by examining the person who prepared it. In the absence of any corroborative evidence of any eye

witness as to the place of occurrence, the finding rendered by the Tribunal as to the negligence of the claimant solely based on the place of occurrence as shown in the scene mahazar cannot be sustained. The finding of the Tribunal that the negligence of the claimant also contributed for the cause of the accident, in the circumstances, is liable to be interfered with.

5. Ext.A2 is the wound certificate produced by the claimant before the Tribunal. The Tribunal found that the claimant sustained Type III compound fracture of both bones of both legs. The Tribunal also found that the claimant sustained other injuries. Ext.X1 series are the treatment records of the claimant. The Tribunal found from the said records that the claimant was admitted in the hospital on 15.3.2007 and was discharged only on 26.5.2007 after the treatment. In other words, the claimant was admitted in the hospital for 72 days.

6. The Tribunal granted only a sum of Rs.3,000/- to the claimant towards bystanders' expenses. Since the accident took place in the year 2007, I am of the view that the claimant is entitled to bystanders' expenses at the rate of Rs.250/- per day. The claimant is, therefore, entitled to a further sum of Rs.15,000/- towards bystanders' expenses. Towards pain and sufferings, only a sum of Rs.18,000/- is seen granted by the Tribunal. Considering the nature of injury sustained by the claimant and the prolonged treatment undergone by him in the hospital for 72 days, I am of the view that the claimant should have been granted at least a sum of Rs.25,000/- towards pain and sufferings. In so far as the claimant was granted a sum of Rs.18,000/-, he is entitled to a further sum of Rs.7,000/- on that head. Only a sum of Rs.2,000/- is seen awarded by the Tribunal towards amenities and enjoyments in life. On an evaluation of the materials on record, especially having regard to the

age of the claimant, the claimant is entitled to at least a sum of Rs.15,000/- towards loss of amenities and enjoyments in life. The claimant is, therefore, granted a further sum of Rs.13,000/- on that head. No amount is seen granted towards extra nourishment. Having regard to the age of the claimant and the inpatient treatment undergone by him in the hospital, I am of the view that the claimant is entitled to a sum of Rs.2,500/- towards extra nourishment as well. Thus, the claimant is entitled to a further sum of Rs.37,500/- towards compensation.

7. 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 finding of the Tribunal that the negligence of the claimant also

contributed to the cause of the accident is vacated. The quantum of compensation granted by the Tribunal is enhanced by granting a further sum of Rs.37,500/- to the claimant. 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., 1715 days, as ordered in C.M.Application No.3009 of 2014.

P.B.SURESH KUMAR, JUDGE.

smm