

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

MACA.No. 2618 of 2014 ()

(AGAINST THE AWARD IN OP(MV)No.1000/2011 of MACT, PALA, DATED 15-02-2014)

APPELLANT/PETITIONER:

VINOJI. S,
S/O.SELVAMONY,
PUTHENPURACKAL HOUSE, KOZHIKKANAM
IInd DIVISION, ESTATE LEYAM, ELAPPARA KARA
ELAPPARA VILLAGE, IDUKKI DIST.

BY ADVS.SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.MANU TOM

RESPONDENT/3RD RESPONDENT:

THE MANAGER
NEW INDIA INSURANCE CO. LTD
MUNICIPAL COMPLEX BUILDINGS, PALA- 686575
KOTTAYAM DISTRICT.

BY ADV. SMT.P.K.SANTHAMMA
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANIL K.NARENDRAN, JJ.

M.A.C.A. No.2618 of 2014

Dated this the 27th day of February, 2015

J U D G M E N T

Anil K.Narendran, J.

The appellant in this appeal is the petitioner in O.P.(MV) No.1000 of 2011 on the file of the Motor Accidents Claims Tribunal, Pala. The said claim petition was filed before the Tribunal claiming compensation for the injuries sustained by the appellant in a motor accident occurred on 31.1.2011, while he was riding a motorcycle bearing registration No.KL-01/AE-8231, through Kattappana-Kuttikkanam public road. When the motorcycle reached Elappara, a bus bearing registration No.KL-5/AB-9874 hit the motorcycle while he attempted to overtake and thereby the appellant sustained serious injuries. Immediately after the accident, the appellant was taken to the Taluk Hospital, Peermedu. After first aid, he was shifted to Medical College Hospital, Kottayam and there he was treated as an inpatient till 5.2.2011. The appellant filed O.P.(MV) No.1000 of 2011 before the Motor Accidents Claims Tribunal, Pala, claiming a total compensation of Rs.3,00,000/-.

2. The respondent Insurance Company entered appearance and filed a written statement contending that, the accident occurred due to the negligence of the appellant. They also disputed the injuries

sustained by the appellant in the accident and also that the amount claimed as highly exorbitant.

3. On the side of the appellant, he was examined as PW1 and exhibits A1 to A13 were marked. The disability certificate issued from Medical College Hospital, Kottayam was marked as Ext.X1. The respondent Insurance Company has not chosen to adduce any oral or documentary evidence.

4. On an appreciation of the facts and circumstances of the case and the evidence on record, the Tribunal came to the conclusion that the accident occurred due to the negligence of the first respondent before the Tribunal who was the driver of the vehicle in question (bus bearing registration No.KL-5/AB-9874). Regarding the quantum of compensation, the Tribunal awarded a total compensation of Rs.79,310/- under different heads. Now the appellant is before us in this appeal claiming enhancement of compensation.

5. We heard the arguments of the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the respondent/Insurer.

6. The only issue that arises for consideration in this appeal is as to whether the compensation amount awarded to the appellant under different heads is just and proper or whether he is entitled for any enhancement.

7. Going by the averments in the claim petition, at the time of accident, the appellant was aged 28 years and he was a field worker earning a monthly income of Rs.6,000/- per mensem. Immediately after the accident, the appellant was taken to the Taluk Hospital, Peermedu. From there he was shifted to Medical College Hospital, Kottayam where he had undergone inpatient treatment till 5.2.2011. Ext.A6 medical certificate would show the injuries sustained by the appellant. Similarly Ext.A7 discharge certificate would show the treatment he had undergone.

8. It is evident from the documents on record that the petitioner had undergone inpatient treatment in the Medical College Hospital, Kottayam for a period of five days. The Tribunal fixed his monthly income as Rs.6000/- by accepting the case put forward by the appellant. Though the appellant claimed Rs.72,000/- as compensation for loss of earnings, taking note of the injury sustained by the appellant and the treatment he had undergone, the Tribunal restricted the loss of earning for a period of three months and awarded a total compensation of Rs.18,000/- under the said head. From the evidence on record we find that the compensation awarded by the Tribunal under the above head is just and proper and it does not require any interference by this Court.

9. Similarly under the head transport to hospital, extra

nourishment, treatment expenses and bystander expenses, the Tribunal awarded the sum of Rs.3,000/-, 1,000/-, 1,750/- and 1,000/- respectively. In the absence of a cogent and convincing materials, we find that the compensation awarded by the Tribunal under the above heads is just and proper, which also does not require any interference by this Court.

10. Towards pain and suffering, the appellant claimed a total compensation of Rs.50,000/- and the Tribunal awarded the sum of Rs.20,000/-. Taking note of the injuries sustained by the appellant and the treatment he had undergone, which is evident from Ext.A6 medical certificate and Ext.A7 discharge certificate, we find that the compensation awarded by the Tribunal under the above head is also just and proper, which also does not require any interference by this Court.

11. Ext.X1 is the disability certificate issued by the Medical Board constituted by the Superintendent, Government Medical College Hospital, Kottayam. Going by Ext.X1 disability certificate, the appellant is having a permanent disability of 5%. But the Tribunal, while calculating the compensation payable to the appellant, reduced the percentage of disability to 3%. We find absolutely no grounds to sustain the said reduction of disability made by the Tribunal. When a duly constituted Medical Board in the Government Medical College

Hospital, Kottayam assessed the disability of the appellant who sustained an injury in a motor accident at 5%, without any cogent or convincing reasons the Tribunal ought not to have reduced the disability to 3%. Therefore we find that the appellant is entitled for compensation towards permanent disability fixing his percentage of disability at 5%.

12. In the award passed by the Tribunal, instead of granting compensation for permanent disability, the appellant was granted compensation under the head loss of earning power. Under the loss of earning power the Tribunal granted a total compensation of Rs.34,560/- fixing his monthly income at Rs.6,000/- and applying a multiplier of 16. But we find that the correct multiplier applicable, taking note of the age of the appellant at the time of accident, is 18 instead of 16. Therefore towards compensation for permanent disability, the appellant will be entitled to get a compensation of Rs.64,800/- ($6000 \times 12 \times 18 \times 5 / 100$). Therefore, in addition to Rs.34,560/- already granted by the Tribunal under the head loss of earning power, the appellant will be entitled for an additional compensation of Rs.30,240/- and the said compensation will be treated as one awarded to the appellant under the head permanent disability.

13. While allowing the petition, the Tribunal awarded interest for the compensation amount only at the rate of 7.5% from the date of

petition, i.e., from 19.11.2011 till the date of payment. In **Kaushnuma Begum v. New India Assurance Co.Ltd.** (2001 (2) SCC 9), which was referred to by the Apex Court in a later decision in **Supe Dei v. National Insurance Co. Ltd.** (2009 (4) SCC 513), taking note of the fact that the nationalised banks are granting interest at the rate of 9% per annum on fixed deposits for one year, the Apex Court has directed that the compensation amount refixed shall bear interest at the rate of 9% per annum from the date of the claim. In Supe Dei's case (supra), after referring to the earlier decision in Kaushnuma Begum's case (supra), the Apex Court awarded 9% interest to the claimant in that case. In view of the above decisions of the Apex Court, we find it just and proper to award the appellant/claimant interest for the additional compensation of Rs.30,240/- granted in this appeal, at the rate of 9% per annum from the date of petition till realisation. The appellant will also be entitled for interest at the rate of 9% per annum on the original compensation of Rs.79,310/- from the date of petition till the date on which the respondent/insurer deposits the said amount before the Tribunal. The respondent being the insurer of the vehicle involved in the accident is directed to deposit the aforesaid amounts together with interest before the Motor Accidents Claims Tribunal, Pala, within a period of three months from today for disbursement to the appellant/claimant.

14. In the result, the appeal is allowed, modifying the award passed by the Tribunal in O.P.(MV) No.1000 of 2011, to the extent indicated above.

No order as to costs.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**

vps