

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

MACA.No. 2773 of 2014 ()

**AGAINST THE JUDGMENT AND AWARD DATED 24.01.2014 MADE IN O.P.(M.V.)NO.533/2009
ON THE FILE OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA**

APPELLANT/PETITIONER:

**BABU AGED 42 YEARS
S/O. PATHROSE, VENGINIKATTUKUDIYIL HOUSE
PANCODE KARA, AIKKARANADU NORTH VILLAGE, ERNAKULAM.**

**BY ADVS.SRI.JOY C. PAUL
DR.ABRAHAM P.MEACHINKARA**

RESPONDENTS:

- 1. JAYAPALAN
S/O. THANKAPPAN, PURATHEPARAMBIL HOUSE
PAZHANTHOTTAM KARA, AIKKARANADU NORTH VILLAGE
ERNAKULAM-682311.**
- 2. ARJUNAN,
S/O. PADMANABHAAN NAIR, EMBRAMADATHIL HOUSE
VADAVUCODE, PUTHENCROUZ-682308.**
- 3. THE ORIENTAL INSURANCE CO.LTD.,
RAJESWARI COMPLEX, PERUNNAI, CHANNGANASSERY
KOTTAYAM-686101.**
- 4. JOHN VADAKKAN,
RAMAPURAM, PALA, KOTTAYAM-686575.**

R3 BY ADV. SMT.REKHA NAIR

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 12-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.B.SURESH KUMAR, J.

M.A.C.A. No.2773 of 2014

Dated this the 12th day of January, 2015

JUDGMENT

The claimant in a proceeding for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted to him.

2. The claimant is a painter by profession. He was aged 37 years at the time of accident. He sustained serious injuries including fracture of lateral cortex of lateral malleolus. He claimed a sum of Rs.1,00,000/- by way of compensation.

3. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled only a sum of Rs.62,368/- by way of compensation and an award was accordingly passed for the said amount. As stated above, it is aggrieved by the said award, the claimant has come up in this appeal.

4. Heard the learned counsel for the appellant/claimant as also the learned counsel for the third respondent/insurer.

5. The fact that claimant was a painter by profession is not seen disputed. Ext.A9 is the wound certificate issued from

Malankara Orthodox Syrian Church Medical College Hospital, Kolenchery to the claimant. Ext.A10 is the discharge summary issued to the claimant from the said hospital. Ext.A10 discharge summary indicates that the claimant suffered fracture of lateral cortex of lateral malleolus in the accident. Ext.A11 is the disability certificate issued to the claimant by one Dr.M.S.Bosalai. The findings arrived at by the doctor, as recorded in Ext.A11 certificate read thus:

- “Left big toe is ankylosed.2%
- Other toe movements reduced to 50% of normal.2%
- Numbness over the distal half of foot, dorsal aspect.1%
- X-Ray, left foot taken on 14.07.11 shows evidence of ankylosis of big toe.”

As is evident from Ext.A11 certificate, the left big toe of the claimant was ankylosed on account of the accident. It is also evident from Ext.A11 that the toe movements of the claimant got reduced to 50% of the normal. The doctor who issued Ext.A11 certificate assessed the percentage of disability of the claimant at 5%.

6. The Tribunal worked out the compensation payable to

the claimant for permanent disablement at Rs.16,200/-, reckoning the monthly income of the claimant as Rs.3,000/- and the disability as 3%, applying the multiplier of '15'. Even though the doctor who issued Ext.A11 disability certificate has assessed the physical disability of the claimant only at 5%, according to me, the functional disability of the claimant as a painter would be more than 5%. It is common knowledge that as a painter, the claimant has to climb on to the buildings in connection with his work and in view of the nature of the injuries sustained by him as noticed above, he will have lot of limitations for his movements as a painter. According to me, in the circumstance, the claimant is entitled to compensation for continuing permanent disability, applying his functional disability at least at 10%. If the compensation payable to the claimant for continuing permanent disablement is worked out, applying the functional disability of 10%, the compensation payable to the claimant on that head would be Rs.54,000/-, in the place of Rs.16,200/- granted by the Tribunal.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal to the claimant is modified granting a further sum of Rs.37,800/- by way of

compensation. Needless to say, the claimant will be entitled to interest also for the enhanced compensation at the rate at which the interest was granted by the Tribunal for the compensation awarded.

JV

SD/-
P.B. SURESH KUMAR,
JUDGE