

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 1341 of 2008 ()

**AGAINST THE AWARD IN OPMV 3218/2002 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 28-08-2006**

APPELLANT(S)/APPELLANT:

**JOBY P.R.
S/O.RAPHAEL, RESIDING AT PALLATH HOUSE, P.O.MANNUTHY
VETTIKKAL, THRISSUR DISTRICT.**

**BY ADVS.SRI.V.CHITAMBARESH (SR.)
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU**

RESPONDENT(S):

**1. THE MANAGING DIRECTOR
KERALA STATE ROAD TRANSPORT CORPORATION
THIRUVANANTHAPURAM.**

**2. GOPI,
S/O. CHAMI EZHUTHASSAN , RESIDING AT, MADAMBULLY HOUSE
THANIYAMKAVU, KANNADI VILLAGE, PALAKKAD DISTRICT.**

**R, BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.
BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR,SC, KSRTC
BY ADV. SRI.JOY GEORGE, SC, K.S.R.T.C.
BY ADV. SRI.P.C.CHACKO, SC, KERALA STATE ROAD TRANSPORT
CORPN.**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

avk

**P.R.RAMACHANDRA MENON
&
BABU MATHEW P.JOSEPH, JJ.**

M.A.C.A.No.1341 of 2008

Dated this the 21st day of July, 2015

JUDGMENT

BABU MATHEW P.JOSEPH, J.

The appellant sustained injuries in a motor accident that took place on 29.8.2002, involving a bus belonging to the 1st respondent. It was driven by the second respondent at the time of accident. The appellant filed a petition before the Motor Accidents Claims Tribunal, Thrissur, claiming compensation on account of the injuries suffered by him in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the second respondent and awarded a total compensation of Rs.41,900/- under various heads as follows:

<i>Loss of earnings</i>	: Rs.6,000.00
<i>Transportation</i>	: Rs. 500.00
<i>Extra nourishment</i>	: Rs. 500.00
<i>Damages to clothing & articles</i>	: Rs. 500.00
<i>Expenses for treatment</i>	: Rs.5,900.00
<i>Expenses for bystander</i>	: Rs. 500.00
<i>Pain & suffering</i>	: Rs.10,000.00
<i>Discomfiture</i>	: Rs.10,000.00
<i>Loss of amenities</i>	: Rs.8,000.00
<i>and enjoyment of life</i>	-----
TOTAL	: Rs.41900.00
	=====

The first respondent was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the

Tribunal, the appellant has preferred this appeal.

2. Notice to the second respondent is dispensed with, as unnecessary. Heard.

3. The appellant had sustained a fracture at the lower end of his right femur and another fracture of the first metatarsal of his left foot in the accident. Bleeding from the right nostril was there. He had sustained abrasions on the right knee, left knee, dorsum of right hand and on both the feet. Also sustained pain and swelling on the right knee and on the left foot. He had undergone inpatient treatment at the Aswini Hospital, Thrissur, for 5 days. Thereafter, he had continued outpatient treatments. The appellant had produced a permanent disability certificate issued by Dr. Jacob. P. J. in which it is certified that he had sustained temporary disability for a period of 4 months and a permanent disability of 8%. The appellant claimed that he was working as a mason at the relevant time. But, he had not substantiated such a claim or his income during the relevant period. He had not even cared to mount the witness box. The doctor who had issued the disability certificate was not examined. The Tribunal had fixed the monthly income of the appellant at Rs.2,000/- and awarded the compensation for the loss of earnings. The appellant was aged 40 at the time of accident. On considering the relevant facts and circumstances and the age of the appellant, we are of the view that his monthly income at the relevant time can be fixed at Rs.2,500/-. On considering the nature of injuries and

treatment, we are of the view that the appellant could not have earned any income at least for a period of 4 months. Therefore, we enhance the compensation for loss of earnings from Rs.6,000/- to Rs.10,000/-. The Learned Tribunal has awarded Rs.10,000/- towards compensation for pain and suffering. This is insufficient. The appellant had suffered one serious fracture and another fracture apart from sustaining several other injuries. On considering these injuries as well as the treatment, we enhance the compensation for pain and suffering to Rs.17,000/-. The learned Tribunal accepted the disabilities namely, stiffness on the left knee and on the left foot certified by the doctor. But, no amount has been awarded specifically under the count of permanent disability. Instead, the learned Tribunal awarded Rs.10,000/- under the head of 'discomfiture'. On considering the disabilities certified, we award a total amount of Rs.20,000/-, including Rs.10,000/- awarded by the Tribunal under the head of 'discomfiture', towards compensation for permanent disability. The learned Tribunal has awarded Rs.8,000/- as compensation for loss of amenities and enjoyment of life which we enhance to Rs.12,000/-. We do not find any reason to interfere with the amounts awarded under other heads. Thus, the appellant is entitled to an additional amount of Rs.25,000/- (Rupees Twenty Five Thousand only) over and above the amount awarded by the Tribunal as compensation. This additional amount of Rs.25,000/- shall carry interest at the rate of 9% per annum from the date of filing of the

claim petition till realization. The first respondent is directed to deposit the amount within two months from today.

This appeal is allowed in part as above.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P. JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

avk