IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

MACA.No.2303 of 2010

(Against the Award dtd. 17.11.2007 in OP (MV) 709/2000 of PRINCIPAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE)

APPELLANT/PETITIONER:

N.K.VIPIN KUMAR, AGED 22 YEARS,
S/O.MADHAVAN, RESIDING AT SURABHI, HOUSE NO.11/45
MUNDODI NILAM, P.O.ERANHIKKAL, NEAR ELATHUR
C.V.N.KALARI, KOZHIKODE.

BY ADVS.SRI.V.S.CHANDRASEKHARAN
SMT.LEKSHMI SWAMINATHAN

RESPONDENTS/RESPONDENTS:
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1. M.V.AHAMMEDKUTTY, S/O. MAMMALY,
AGED NOT KNOWN, RESIDING AT CHALYTHODI HOUSE
P.O.NALLALAM, KOZHIKODE-673 004.

2. M.V.ABDUL AKBAR, AGED 32 YEARS,
S/O. MUHAMMEDKOYA, RESIDING AT MULLAVEETTIL HOUSE
P.O.NALLALAM, NALLALAM AMSOM, KADAVATH PEEDIKA
KOZHIKODE-673 004.

3. UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE-11, MAVOOR ROAD, KOZHIKODE
GENERAL POST OFFICE, PIN-673 003.

R3 BY ADV. SMT.T.C.SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

M.A.C.A No.2303 OF 2010

Dated this the 29th day of May, 2015.

J U D G M E N T

Aggrieved by the inadequacy in the Award passed by the Tribunal, claimant before the court below has come up in appeal.

2. The claimant suffered an accident on 22.02.2000, as a result of which he suffered several injuries including two fractures, one on his nasal bone and other on his occipital bone. Alleging negligence on the part of the driver of the vehicle, claimant laid a claim for compensation before the Tribunal.

3. Insurance Company entered appearance and contested the matter. They admitted policy for the vehicle. They contended that the driver did not have valid driving licence. They also attributed negligence on the part of the driver.

4. Parties went to trial and Exts.B1 to B3 were marked. Issue as to who was negligent in causing the accident resulted in

a finding that the driver of the bus was responsible for causing the accident. That being an essential question of fact does not arise for consideration in this appeal.

5. Coming to the compensation awarded, Tribunal has awarded Rs.6,500/- as compensation under various heads which read as follows:

“Medical Treatment and incidental charges	-	Rs.1500/-
Pain and suffering	-	Rs.3000/-
Loss of income	-	Rs.1500/-
Transportation	-	Rs. 500/-

		Rs.6500/-”

Insurance Company was directed to pay the amount to the claimant and to recover it from the driver since the driver has no valid licence.

6. Learned counsel appearing for the appellant contended that the amount of compensation is inadequate and is disproportionate to the injuries suffered by the injured. There is no reason for having arrived at various meagre amounts and no

principle is seen followed for quantifying the amount. A pittance has been granted under four heads and it is significant to notice, according to the learned counsel, that certain other well accepted heads of loss have been conveniently omitted. Learned counsel pointed out that the amounts given under various heads are grossly inadequate since that does not represent the actual sufferings undergone by the appellant. Therefore, enhancement is sought for.

7. Learned counsel appearing for the Insurance Company pointed out that no documents have been produced by the appellant in support of his case and therefore, the Tribunal was perfectly justified in granting Rs.6500/- as compensation.

8. After having heard the learned counsel on both sides, this Court is of the opinion that the amount of compensation is grossly inadequate and does not represent a true compensation that the claimant is entitled to. The Tribunal has observed that injuries are not disputed by the Insurance Company. The claimant has pointed out that he has suffered fracture on nasal

bone and on occipital bone and certain other injuries on various parts of the body. Having suffered two fractures, he must have undergone treatment for some time and it seems rather strange that the Tribunal did not take note of the other heads and the actual expenses that would have been incurred by the claimant for treatment.

9. It is also not discernible from the order of the Tribunal how the amounts under various heads have been arrived at. It is true that the claimant has not produced any document in support of his case. However, the fact remains that the injuries are not disputed. Consequent sufferings can be inferred.

10. As things now stand, going by the records now available, the injured has suffered two fractures, one on his nasal bone and the other on his occipital bone. These are serious fractures. After having undergone such fractures, he would have been incapacitated for going for job at least for three months. Considering Rs.2500/- as income for one month, loss of income for three months would come to Rs.7500/-. Nature of injury is

such that he would have undergone medical treatment and must had spent expenses for the same. In the absence of any materials in support of his treatment, it is felt that a sum of Rs.2,000/- would be reasonable to meet medical expenses. Of course, he would have to go to doctor on several occasions and for that purpose, a sum of Rs.1,000/- is granted as compensation. Considering the nature of injuries suffered by the claimant, apart from other injuries he has suffered two fractures and therefore he must have considerable pain and suffering. A sum of Rs.12,000/- is awarded as pain and suffering.

True, the claimant has not produced any document to show his disability. Since the nature of injuries is not disputed, it is reasonable to presume that he must have suffered a minimum percentage of disability and he has also suffered loss of amenities in life. A sum of Rs.20,000/- is awarded in that regard. Therefore, the total compensation works out to Rs.42,500/-. Tribunal has awarded Rs.6500/-. The appellant is entitled to compensation of Rs.42,500/- with 8% interest from the date of petition. Insurance Company shall pay the amount and the Company is entitled to recover the same from the owner of the vehicle. It has been found that the driver of the offending vehicle did not have a valid licence. That means the Insurance Company is not liable. But pay and recover rule apply.

This appeal is allowed.

Sd/-

P.BHAVADASAN
JUDGE

smp

// True Copy //

P.A. To Judge.