

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

MACA.No. 2696 of 2009 ()

**AGAINST THE AWARD IN OPMV 1521/2003 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR DATED 04-04-2009**

APPELLANT/PETITIONER:

**MURALI.A., S/O.AYYAPPAN,
KODUVALPARA HOUSE, P.O.POTHUNDY, PALAKKAD DISTRICT.**

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

- 1. THE PRESIDENT, PALA DISTRICT AUTORICKSHAW
AUTORICKSHAW DRIVERS CO-OPERATIVE
SOCIETY LTD.NO.P.606, G.B.ROAD, PALAKKAD DISTRICT.**
- 2. S.SURESH, S/O.SELVAN,
VIII/78, KODUVALPARA, NENMARA
CHITTOOR, PALAKKAD.**
- 3. NATIONAL INSURANCE CO.LTD.,
REPRESENTED BY DIVISIOAL MANANGER
NATIONAL INSURANCE CO.LTD., DIVISIONAL OFFICE
THRISSUR.**

**R1 BY ADV. SRI.K.ANAND
R3 BY ADV. SMT.SARAH SALVY**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
28-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
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M.A.C.A.No.2696 of 2009
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Dated this the 28th day of May, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(M.V.)No.1521 of 2003 on the file of the Motor Accidents Claims Tribunal, Thrissur. By award passed on 4.4.2009, the Motor Accidents Claims Tribunal awarded the sum of Rs.1,28,250/- as compensation under different heads and directed the third respondent insurer to pay the said amount together with interest at 7% per annum from the date of petition (29.6.2003) till the date of actual payment along with proportionate costs. The claimant has, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal. The brief facts of the case are as follows:-

2. The appellant was travelling as a passenger in an autorickshaw bearing registration No.KL-9H/1214 owned by the first respondent and driven by the second respondent. It is alleged that at about 3.15 p.m. on 11.8.2002 on account of the negligent driving of the second respondent, the autorickshaw hit against an electric post and in that accident the appellant/claimant sustained serious injuries.

The appellant was taken to Medical College Hospital, Thrissur where he underwent treatment as an inpatient for a total period of 81 days. In the claim petition filed on 29.6.2003 he claimed a total sum of Rs.3,04,000/- as compensation under various heads contending that the accident took place on account of the rash and negligent driving by the second respondent.

3. Upon receipt of summons, the third respondent entered appearance and filed a written statement resisting the claim petition. It was contended that the accident took place on account of the negligence of the claimant. The third respondent also contended that the compensation claimed under various heads is exorbitant and excessive. A further contention that at the time of accident the autorickshaw was not driven by the second respondent but by a person named Sangeethan, who did not possess a valid driving licence and therefore, the insurer is not liable to pay compensation was also raised. Before the Motor Accidents Claims Tribunal the claimant was examined as PW1. Exts.A1 to A12 were produced and marked on the claimant's side. The doctor who issued Ext.A11 disability certificate, after examining him and after going through the medical records issued from Medical College Hospital, Thrissur, was examined as PW2. No evidence oral or documentary was adduced on the side of the

respondents. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the negligent driving by the second respondent. The Motor Accidents Claims Tribunal thereafter awarded the sum of Rs.1,28,250/- as compensation under various heads. The Motor Accidents Claims Tribunal awarded compensation for permanent disability and loss of earnings taking the monthly income of the claimant as Rs.2,000/-. Though PW2 had in Ext.A11 disability certificate assessed the whole body disability at 32%, the Tribunal took the whole body disability as only 20% and compensation was quantified on the above basis. As stated earlier, the claimant has, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

4. We heard Sri.P.V.Chandramohan, learned counsel appearing for the appellant and Smt.Sarah Salvy, learned counsel appearing for the third respondent insurer. The appellant/claimant had in the claim petition stated that at the time of the accident he was working as a coolie and earning a monthly income of Rs.4,500/-. The claimant when examined as PW1 had deposed to the fact that he was earning a monthly income of Rs.4,500/-. However, on the short ground that there is no acceptable evidence to prove the monthly income the

Tribunal notionally fixed his monthly income at Rs.2,000/-. In our opinion, a person earning his livelihood as a coolie cannot be expected to maintain accounts of his income and expenditure or furnish evidence to prove the actual income which he was earning at the time of the accident. The appellant/claimant had in the claim petition averred that he was earning a monthly income of Rs.4,500/-. He had also spoken to the said fact when he was examined as PW1. The Apex Court has in **Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited** (AIR 2011 SC 2951) held that the court cannot expect a person working as a coolie to produce documentary evidence to substantiate his claim. The Apex Court held in identical circumstances that the Tribunal should have in the absence of any other evidence to the contrary accepted the claim of the claimant. It was held that in and around the date of the accident which in that case was in the year 2004, the wage of a labourer was between Rs.100/- to Rs.150/- per day or Rs.4,500/- per month. The Apex Court held that as the claim was honest and bona fide, there was no reason for the Tribunal to reduce the monthly earning from Rs.4,500/- to Rs.3,000/-.

5. The accident in the case on hand took place in the year 2002. In such circumstances, we are persuaded to hold that the Tribunal

ought to have in the absence of any evidence to the contrary proceeded on the basis that the monthly income of the appellant/claimant was Rs.3,000/- and awarded compensation for loss of earnings and permanent disability on that basis. It is not in dispute that the appellant was under treatment as an inpatient for a period of 81 days. The Motor Accidents Claims Tribunal awarded the sum of Rs.12,000/- as compensation for loss of earnings for six months taking his monthly income as Rs.3,000/-. In the view that we have taken, we are of the opinion that he is entitled to be awarded the sum of Rs.18,000/- as compensation towards loss of earnings for a period of six months. We accordingly award a further sum of Rs.6,000/- as compensation under the head loss of earnings to the appellant/claimant.

6. The evidence on record indicates that the appellant had sustained very serious injuries in the accident. PW2, the doctor who issued Ext.A11 disability certificate had deposed that the petitioner has anosmia and chance of seizures as a sequel to the head injuries sustained by him. It has come out in evidence that the appellant has lost the hearing capacity of his left ear and his sense of smell. PW2 has also certified that the whole body disability of the appellant is 32%. Though PW2 was cross-examined, nothing was brought out to discredit

his testimony. The Tribunal has notwithstanding that fact, without stating any reasons, taken the whole body disability as only 20%. After going through the pleadings and the materials on record and having regard to the injuries sustained by the appellant/claimant and the medical evidence on record, we are of the opinion that the appellant/claimant is entitled to be awarded compensation for permanent disability on the basis that he has a whole body disability of 32%.

7. The appellant/claimant was aged 19 years as on the date of the accident. Applying the principles laid down by the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [(2009) 6 SCC 121] the multiplier to be adopted is 18. We have already held that the monthly income of the appellant/claimant should be taken as Rs.3,000/-. Computed on that basis, the compensation payable to the appellant under the head permanent disability will be Rs.2,07,360/-(Rs.3,000/- X 12 X 18 X 32/100). The Motor Accidents Claims Tribunal has awarded only a sum of Rs.76,800/- under that head. The appellant/claimant is thus entitled to a further compensation of Rs.1,30,560/- towards permanent disability.

8. As stated earlier, the appellant/claimant had sustained very serious injuries including head injuries in the accident and was under

treatment for about 81 days. He had also undergone a surgery. Though he had claimed a total sum of Rs.30,000/- towards compensation for pain and suffering, notwithstanding the extensive injuries suffered by him, the Tribunal awarded only the sum of Rs.18,000/- as compensation for pain and suffering. On an overall view of the matter, we are of the opinion that the Tribunal ought to have awarded atleast the sum of Rs.25,000/- as compensation for pain and suffering. We accordingly award an additional sum of Rs.7,000/- to the appellant/claimant as compensation for pain and suffering. The Tribunal has also not awarded any compensation to the appellant/claimant under the head loss of amenities of life. For the reasons which we have already stated we are of the opinion that the Tribunal ought to have awarded atleast the sum of Rs.25,000/- as compensation under the head loss of amenities of life. Though the learned counsel appearing for the appellant pressed for enhancement of the compensation awarded under the other heads, on a consideration of the materials before us, we are of the opinion that the compensation awarded under the other heads does not merit any enhancement.

We accordingly hold that the appellant/claimant is entitled to an additional compensation of Rs.1,68,560/- (Rs.1,30,560 +

Rs.7,000+Rs.25,000+Rs.6,000) over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the said sum together with interest at 9% per annum from the date of petition (29.6.2003) till the date of deposit, in the Motor Accidents Claims Tribunal, Thrissur within two months from today. Upon such deposit being made, the entire amount deposited shall be released to the appellant/claimant along with the amount if any presently lying in deposit. The parties shall suffer their costs in this Court.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**

/TRUE COPY/

P.A. TO JUDGE

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