

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

MACA.No. 2371 of 2010 ()

AGAINST THE AWARD IN OPMV 638/2007 of M.A.C.T.,
KOZHIKODE, DATED 21-10-2009.

APPELLANT/CLAIMANT:-

MOHAMMED SHAFI, AGED 26 YEARS,
MULLUNKAL HOUSE, P.O.FEROKE, EAST NALLUR
KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS:-

1. C.MUHAMMED MUSTHAFI,
S/O.ALIKOYA, AGED 29 YEARS, NALLEDATH HOUSE
P.O.CHALIYAM, VATTAPPARAMBA, KOZHIKODE DISTRICT.

2. P.K.ABDUL AZEEZ, S/O.MUHAMMED,
AGED 50 YEARS, KUZHIMBADATH HOUSE, P.O.PERUMUGHAM
KOZHIKODE.

3. UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE, WHITE LINES BUILDING, KALLAI ROAD
KOZHIKODE.

R3 BY ADV. SMT.S.JAYASREE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

M.A.C.A.No.2371 of 2010.

Dated this the 9th day of March, 2015.

J U D G M E N T

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

2. The claimant is a painter. The accident took place on 6.12.2006. The claimant was aged 23 years at the time of accident. A sum of Rs.1,00,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.41,805/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said award.

3. Heard the learned counsel for the claimant and

the learned counsel for the insurer.

4. The claimant sustained fracture of both bones of his right forearm, right Olecranon and lateral condyle right. Ext.A2 is the wound certificate issued to the claimant from the Medical College Hospital, Kozhikode. Ext.A3 is the discharge card issued to the claimant from the said hospital showing that the claimant was admitted and treated as inpatient in that hospital from 6.12.2006 to 27.12.2006. Ext.A4 is another discharge summary issued from the Kozhikode District Co-operative Hospital showing the admission of the claimant on 6.1.2007 and discharge on 13.1.2007.

5. Towards loss of earnings, the Tribunal has granted only a sum of Rs.3,000/-. As noticed above, the claimant is a painter. All the injuries were sustained on his right forearm. In the above circumstance, I am of the view that the claimant is entitled to compensation for loss of earnings at least for a period of three months reckoning his monthly income at Rs.5,000/-. The claimant is therefore

entitled to a further sum of Rs.12,000/- on that head. Towards bystander's expenses, the Tribunal has granted only a sum of Rs.1,000/-. It is beyond dispute that the claimant has undergone treatment in the hospitals for a period of 26 days. In the above circumstances, the claimant is entitled to a further sum of Rs.5,000/- towards bystander's expenses. No compensation is seen awarded by the Tribunal for extra nourishment. I am of the view that the claimant is entitled to a sum of Rs.3,000/- on that head. Though the claimant sustained various injuries including fracture of both bones of right forearm, no compensation is granted towards continuing disability. The claimant has been granted a sum of Rs.3,500/- towards loss of amenities. In the circumstances, the claimant is granted a further sum of Rs.16,500/- towards continuing disability and loss of amenities and enjoyments in life. Thus, the claimant is entitled to a further sum of Rs.36,500/- towards compensation.

6. It is seen that interest has been granted by the

Tribunal for the compensation awarded only at the rate of 7% per annum. It is now settled that the claimant in a proceedings of this nature is entitled to interest for the compensation awarded at the rate of 9% per annum.

In the result, the appeal is allowed in part. The compensation granted by the Tribunal is modified granting a further sum of Rs.36,500/- to the claimant by way of compensation. Needless to say, the claimant will be entitled to interest for the whole amount of compensation at the rate of 9% per annum, except for the period of delay in filing the appeal, viz., 118 days as ordered in C.M.Application No.3081 of 2010.

Sd/-P.B.SURESH KUMAR, JUDGE.

Kvs/-

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PA TO JUDGE.