

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

MACA.No. 1420 of 2008 ()

**AGAINST THE AWARD IN OPMV 1436/2002 of M.A.C.T., THALASSERY DATED
29-06-2007**

APPELLANT(S) /APPELLANT/PETITIONER:

T.P.RAVINDRAN,
S/O.LATE KUNHIRAMAN, AGED 47 YEARS
THEKKEPUNATHIL HOUSE, P.O.EAST KADIRUR.

BY ADV. SRI.M.SASINDRAN

RESPONDENT(S) /RESPONDENTS:

1. V.M.JANAKI AMMA,
W/O.C.M.K.NAIR, KAKKANDIYIL HOUSE, KAVIYOOR
P.O.CHOKLI.

2. RINEESHKUMAR, S/O.KRISHNAN,
GOVINDRAKANDY HOUSE, P.O.KARIYAD.

3. THE UNITED INDIA INSURANCE CO.LTD.,
KANNUR.

R,R3 BY ADV. SMT.T.C.SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.1420 OF 2008

DATED THIS THE 26th DAY OF OCTOBER, 2015

JUDGMENT

ANIL K.NARENDRA, J.

The appellant is the claimant in O.P.(MV)No.1436 of 2002 on the file of the Motor Accidents Claims Tribunal, Thalassery, an application filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) claiming compensation for the injuries sustained in a motor accident occurred on 1.5.2002. The appellant was proceeding towards the New Bus Stand, Thalassery to board a bus. When he reached the western side of the bus stand, a bus bearing registration No.KL-13/4555, owned by the 1st respondent, driven by the 2nd respondent and insured with the 3rd respondent, came in rash and negligent manner and hit the appellant and he sustained injuries. The appellant claimed a total compensation of Rs.3,00,000/- from the respondents. The appellant contended that the accident occurred due to the rash and negligent driving of the 2nd respondent and as such the respondents being the owner, driver and insurer respectively of the bus are jointly and

severally liable to pay the amount of compensation awarded by the Tribunal.

2. The 1st and 2nd respondents filed joint written statement contending that the accident occurred when the appellant suddenly jumped in front of the bus from the road margin and it was not due to any negligence on the part of the 2nd respondent. At the time of accident the bus was insured with the 3rd respondent. They also contended that the claim made is excessive.

3. The 3rd respondent insurer filed written statement admitting the insurance coverage of the bus involved in the accident. The 3rd respondent contended that, the accident occurred not due to any negligence on the part of the 2nd respondent and that the claim made is excessive.

4. Before the Tribunal, the claimant was examined as PW1 and Exts.A1 to A12 were marked on his side. The disability certificate issued by the Medical Board attached to General Hospital, Thalassery was marked as Ext.X1. The respondents have not chosen to adduce any oral or documentary evidence.

5. On an appreciation of the facts and circumstances of the case and the evidence on record, the Tribunal came to the conclusion that the accident occurred due to the negligent driving of the 2nd respondent. The Tribunal fixed the total compensation payable at Rs.1,17,660/- and allowed the appellant to realise the same from the respondents, together with interest at the rate of 7% per annum from the date of petition (9.10.2002) till realisation and the 3rd respondent being the insurer of the bus was directed to produce the cheque for the award amount before the Tribunal. Dissatisfied with the quantum of compensation awarded under different heads, the appellant is before this Court in this appeal filed under Section 173 of the Act.

6. We heard the arguments of the learned counsel for the appellant and also the learned Standing Counsel for the 3rd respondent insurer.

7. The only question that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal under different heads represents just and reasonable compensation.

8. At the time of accident, the appellant was aged 47 years and working as Attender Grade II at Government Hospital, Thalassery, drawing a total amount of Rs.3,683/- towards pay and DA. Due to the injuries sustained in the accident, he had to undergo in-patient treatment at General Hospital, Thalassery from 1.5.2002 to 8.5.2002 and thereafter at Baby Memorial Hospital, Kozhikode till 23.5.2002. He was again admitted in General Hospital, Thalassery on 27.5.2002 and discharged on 10.7.2002. In the accident, the appellant sustained fracture of left ankle, fracture of medial malleolus and fracture of shaft of fibula. Ext.A2 is the wound certificate, Exts.A3 to A5 are the admission/discharge certificates and Exts.A6 and A7 are the discharge card/slip. Ext.A8 series are medical bills for a total sum of Rs.30,938/- and Ext.A9 series are taxi/ambulance receipts. Ext.A11 is the leave certificate issued from General Hospital, Thalassery, which would show that the appellant availed commuted leave for 30 days, earned leave for 29 days and leave without allowance for 32 days, for the period from 2.5.2002 onwards. Ext.A12 series are the photographs and negatives,

which would show that there is disfiguration on both legs. In Ext.X1 disability certificate the Medical Board attached to General Hospital, Thalasserry assessed a permanent whole body disability of 11.8% as per *McBride Scale*.

9. Towards medical expenses, the Tribunal awarded a sum of Rs.30,938/-, covered by Ext.A8 series of medical bills. In the absence of any cogent and convincing materials on record, the appellant is not entitled for any enhancement of compensation under this head.

10. Towards transportation charges, the Tribunal awarded a sum of Rs.1,973/-. Ext.P9 series are the receipts for taxi/ambulance charges. Considering the nature of injuries sustained by the appellant and the treatment he had undergone, as borne out from the materials on record, we deem it just and proper to grant an additional amount of **Rs.1,000/-** towards transportation charges, thereby re-fixing the transportation charges at Rs.2,973/-.

11. Towards bystander expenses, the Tribunal awarded a sum of Rs.7,700/-, which represents a just and reasonable

compensation under this head. Therefore, the appellant is not entitled for any enhancement of compensation under this head.

12. Towards loss earning for three months, the Tribunal awarded a sum of Rs.11,049/-, relying on Ext.A11 leave certificate. Considering the nature of injuries sustained by the appellant and the treatment he had undergone, we find that the said amount awarded by the Tribunal represents a just and reasonable compensation under this head, which requires no interference in this appeal.

13. Towards extra nourishment, the Tribunal awarded a sum of Rs.1,000/-, which represents a just and reasonable compensation under this head. Therefore, the appellant is not entitled for any enhancement of compensation under this head.

14. Towards compensation for pain and suffering, the Tribunal granted a sum of Rs.20,000/-. In the accident, the appellant sustained fracture of left ankle, fracture of medial malleolus and fracture of shaft of fibula, which is evident from the medical records and he had also undergone in-patient treatment. Considering the nature of injuries sustained by the appellant and

the treatment he had undergone, as borne out from the materials on record, we deem it just and proper to grant an additional amount of **Rs.10,000/-** towards compensation for pain and suffering, thereby re-fixing the compensation under this head at Rs.30,000/-.

15. Towards compensation for disfiguration, the Tribunal awarded a sum of Rs.10,000/-. Ext.A12 series of photographs show disfiguration on both legs and it was after considering the same the Tribunal awarded the said amount. We find that, the said amount awarded by the Tribunal represents a just and reasonable compensation under this head and the appellant is not entitled for any enhancement under this head.

16. Towards compensation for loss of amenities, the Tribunal awarded a sum of Rs.35,000/-. The compensation awarded by the Tribunal, after considering the nature of injuries sustained by the appellant, represents a just and reasonable compensation under this head, which requires no interference in this appeal.

17. In Ext.X1 disability certificate the Medical Board

assessed a permanent whole body disability of 11.8% as per *McBride Scale*. The appellant, who was examined as PW1 deposed that, he still works in the General Hospital and there is no reduction in his salary. Therefore, the Tribunal concluded that, the disability sustained in the accident has not resulted in loss of earnings and as such the appellant is not entitled for any compensation under this head. However, we find that, though the permanent whole body disability of 11.8% assessed in Ext.X1 disability certificate may not result in loss of earnings till the appellant attains the age of superannuation, i.e., till he attains 56 years, it will certainly have an impact on his earning power after retirement. As evident from Ext.A11 leave certificate, at the time of accident, the appellant who was aged 47 years, was working as Attender Grade II at Government Hospital, Thalassery and drawing Rs.3683/- towards pay and DA. For the purpose of assessing the loss of earning power, we fix Rs.5,000/- as the notional monthly income of the appellant at the age of 56 years. Applying the multiplier of 9 and the percentage of disability as 11.8%, as assessed in Ext.X1 disability certificate, the appellant

will be entitled for an amount of **Rs.63,720/-** (5000 x 12 x 9 x 11.8%) towards compensation for loss of earning, which would represent a just and reasonable compensation under this head.

18. In the result, this appeal is allowed by awarding a total sum of **Rs.74,720/-** as additional compensation under the above heads.

19. The Tribunal awarded interest at the rate of 7% per annum from the date of petition till realisation. In **Kaushnuma Begum v. New India Assurance Co. Ltd. and others (2001 (2) SCC 9)**, the Apex Court noticed that the Nationalised Banks are granting interest at the rate of 9% on fixed deposit for one year and directed that the compensation amount fixed in that case shall bear interest at the rate of 9% per annum from the date of the claim. In that view of the matter, the appellant will also be entitled for interest at the rate of 9% per annum for the additional compensation of Rs.74,720/- awarded in this appeal from the date of petition (9.10.2002) till deposit before the Tribunal.

20. Since the insurance coverage of the vehicle involved in

the accident is admitted, the 3rd respondent insurer shall deposit before the Tribunal the additional compensation of Rs.74,720/- awarded in this appeal together with interest, within a period of one month from the date of receipt of a certified copy of this judgment. On such deposit being made, the Tribunal shall permit the appellant to withdraw the said amount.

The parties shall suffer their costs in the appeal.

sd/-
P.R.RAMACHANDRA MENON,
JUDGE

sd/-
ANIL K.NARENDRA,
JUDGE

kmd

/True copy/

P.A. to Judge