IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

MACA.No. 2770 of 2009 ( )

AGAINST THE AWARD IN OPMV 391/1999 of II ADDL. MACT, KOZHIKODE DATED 23.10.2008

APPELLANT/CLIMANT:

P.ABDUL SALEEM
AGED 37 YEARS, S/O AYYAMMEDKUTTY
FOUSIYA MANZIL, URUVACHAL
CHOVVA.P.O, KANNUR.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS:
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1. RAVEENDRAN, S/O ANANDAN,
   MADATHANKANDIYIL HOUSE, CHELORA AMSOM
   THILANNOORE DESOM, THILANNOOR.P.O, KANNUR.

2. N. SUDHEESH, S/O. VASUDEVAN,
   SUREKHA, AVANJABI HOUSE, CHELORA
   AMSOM, THILANNOOR DESOM, THILANNOOR.P.O
   KANNUR.

3. UNITED INDIA INSURANCE CO. LTD.,
   BRANCH OFFICE, BROTHER'S COMPLEX, THALASSERY
   KANNUR.

R3 BY ADV. SRI.P.MURALEEDHARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

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

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M.A.C.A. No. 2770 of 2009

Dated this the 10th day of December, 2015

JUDGMENT

RAMACHANDRA MENON,J

The case involves an accident occurred in the year 1997. The appellant was travelling as a pillion rider on the motor cycle bearing No. KL 11 F 942 belonging to his brother-in-law. On 6.12.1997, when the motor cycle reached the place of occurrence, a mini lorry bearing No.KRC 5253 owned, driven and insured by the respondents 1, 2 and 3 respectively before the Tribunal, dashed against the motor cycle throwing them down, causing serious injuries, which was sought to be compensated by filing claim petition before the Tribunal.

2. The case put forth before the Tribunal was that the appellant was a business man aged 27 years earning a sizeable income of ₹4,000/- per month. Because of the injuries sustained, serious adverse circumstances have been resulted, affecting the earning capacity and such other aspects. The appellant-claimant was examined as PW1 and documents were produced and marked as Exts. A1 to A9. Disability certificate was caused to be

produced and marked as Ext.X1, certifying the extent of disability as 2%. No evidence, oral or documentary was adduced or marked from the part of the respondents. Based on the available materials on record, the Tribunal found that the accident was due to the negligence solely attributable to the driver of the mini lorry. Compensation payable was worked out in the said circumstance.

3. The injuries sustained by the appellant and the consequence resulted have been discussed in paragraph 7 of the award, which is to the following effect:

> "7. Issue No.2:- Ext.A2 is the accident register cum wound certificate issued from A.K.G.Memorial Co-operative hospital, Kannur. The injuries noted in Ext.A2 are lacerated wound 2 x 2 cm. Left leg upper third, lacerated wound 2 x 2 cm. Right ankle medially and deformity right leg lower half. X-ray shows fracture of both bones of right leg. Ext.A3 is the discharge summary issued from City Hospital, Mangalore. It shows that the petitioner was admitted on 10.12.97 and discharged on 2.1.1998. He had undergone operation on 23.12.1997 for interlocking of right tibia. Ext.A5 is the letter by Dr. Shashidharan to Dr. Shetty after examining the injured. Ext.A6 is the discharge summary from City Hospital, Mangalore. As per this certificate the injured was admitted on 3.3.2003 and discharged on 7.3.2003. Petitioner had gone to the hospital for removal of nail and it was done on 5.3.2003. Ext.A7 series are various prescriptions and Ext.A8 series are

medical bills worth ₹30,507/-. The nature of injuries show that the petitioner would have spent more amount for treatment. Thus the petitioner is entitled to get the amount shown in the admissible medical bills. Ext.X1 is the Medical Board report issued from the Medical College Hospital, Kozhikode. As per this certificate he had got 2% disability. The petitioner is stated to be a merchant but there is no income proof. He was aged 27 years at the time of accident. Considering the period of accident Rs.1,800/- can be taken as notional income. Thus his annual income comes to Rs.21,600/-. The multiplier applicable to a person aged 27 years is eighteen. Thus 2% disability can be quantified as Rs.7,776/-."

4. The amounts awarded by the Tribunal as given under paragraph 8, showing the split up figures are in the following terms:

Transport to hospital	₹2,000/-
Extra nourishment	₹1,000/-
Damage to cloth	₹750/-
Bystander expenses	₹3,100/-
Medical expenses	₹30,507/-
Pain and suffering	₹12,000/-
Temporary loss of earning	₹9,000/-
Compensation for permanent disability	₹7,776/-
Loss of amenities in life	₹4,000/-
Total	₹70,133/-

A total compensation of ₹70,133/- was awarded which was ordered to be satisfied with interest at the rate of 7% per annum from the date of petition, which is sought to be enhanced in this appeal.

5. Heard the learned counsel for the appellant as well as the learned counsel for the Insurance Company.

7. Obviously, no evidence was adduced to show the income of the appellant. It is also true that the accident occurred was in the year 1997. But considering the facts and circumstances and the prevailing economic conditions on the date of the accident, we find it appropriate to reckon the notional income as ₹2,500/- to work out the compensation payable. The Tribunal has reckoned five months' loss of earning, granting a sum of ₹9,000/- which actually comes to ₹12,500/-, based on the enhanced income and hence the balance payable comes to ₹3,500/-.

8. Similarly, the compensation for disability is to be worked out as ₹2,500X12X2/100X18 = ₹10,800/-, whereupon the balance payable will be ₹3,024/-. The Tribunal has awarded ₹12,000/- towards pain and suffering. In view of the serious nature of injuries as discussed above and the ordeal undergone

by the appellant, we find it appropriate to enhance the same by a further sum of ₹8,000/- so as to make it ₹20,000/-. It is seen that only a sum of ₹4,000/- has been awarded by the Tribunal towards loss of amenities in life, which is quite inadequate. We find it appropriate to have the same enhanced to ₹20,000/- and as such, the balance payable is ₹16,000/-.

In the above circumstances, the total balance compensation payable comes to ₹**30,524**/- which shall be satisfied with interest at the rate of 9% per annum from the date of the petition. Since the policy is admitted, we direct the Insurance Company to have it deposited within one month from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent. No costs.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

kp/-