IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

MACA.No. 2597 of 2010 ( )

AGAINST THE AWARD IN OP(MV) 447/2008 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALA DATED 5.7.2010

APPELLANT/PETITIONER:
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AHAMED KABEER, S/O. LATE ABDUL KARIM
PULICKAL HOUSE, KANAKAPPALAM.P.O., KARIMKALLUMMOOZHY
ERUMELY (VIA).

BY ADV. SRI.P.C.HARIDAS

RESPONDENTS/RESPONDENTS:
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1. **KUTTAN MENON, CHERUVARAMBATHU HOUSE**
   KARIMPUZHA, PALAKKAD DISTRICT. PIN-679 518.

2. **NOUFAL.K.H., KUNNUPARAMBIL HOUSE,**
   MUTTAPPALLY.P.O., MUKKOOTUTHARA (VIA), PIN-686 510.

3. **THE NEW INDIA ASSURANCE CO. LTD.,**
   REPRESENTED BY BRANCH OFFICE, PALA. 686 575.

R1 BY ADV. SRI.R.SREEHARI
R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SHG/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

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M.A.C.A.No.2597 of 2010

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Dated this the 8th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal filed by the claimant, he is mainly aggrieved by the lesser amount of compensation granted by the Tribunal.

2. We heard the learned counsel on both sides.

3. The necessary details for considering the claim are the following: he was a driver by profession and was riding an autorickshaw owned by him bearing registration No.KL-5P/8964. On 4.4.2008 at about 7.15p.m. while it was being plied through Erumely-Mundakkayam road near Charala the accident occurred. The offending vehicle is a jeep bearing registration No.KLM 7355. Immediately he was taken to the hospital at Taluk Head Quarters, Kanjirappally since he sustained serious injuries. The Tribunal has found negligence as against the driver of the jeep and there is no appeal by him. Therefore the said

finding is confirmed.

4. Ext.A6 copy of Accident Register Cum-Wound Certificate has been produced to support that he sustained severe injuries and the treatment undertaken by him. Ext.A12 is the disability certificate wherein disability is shown as 30%. Ext.A6 will show that he sustained swelling (R) thigh, abrasion (R) forearm, (R) knee and lacerated wound 1 c.m. (R) thigh. He was referred to Medical College Hospital, Kottayam. Exts.A7, A8, A9 and A10 are the discharge cards showing treatment on different occasions and the total inpatient period is 75 days. Ext.A11 discharge card shows that there is infected non union femur fracture (R).

5. The monthly income claimed was at Rs.5,000/-. But the Tribunal adopted only Rs.3,000/- and thereafter reduced it to Rs.2,500/- for calculating the compensation. The same is really unsustainable. Rs.5,000/- for a driver in 2008 cannot be said to be exorbitant and we adopt the same as he has produced the driving license as Ext.A17. He was

aged 35 at the time of the accident and hence the multiplier going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)** will be 16.

6. The main attack is against the finding concerning percentage of disability. The Tribunal has reckoned it as 18% for assessing the compensation.

7. We have gone through the certificate and the Doctor has certified the same on different grounds. From the certificate it is seen that he has got 3 cm. shortening. It is also noted that there is infected non union femur fracture. There is deformity also. After considering all these aspects, we take 20% as the functional disability. In view of the disability sustained, there will be loss of amenities and loss of enjoyment in life. Of course his avocation as driver will be affected only to that extent and there will not be total disability. The Tribunal has granted expenses for bystander's at Rs.100/-. Being the accident of 2008, we take it as Rs.250/- per day. The compensation is therefore

re-fixed in the following manner:

Head of claim	Amount awarded in Rs.
Disability	5000x12x16x20/100 192000
Bystander's expenses	75x250 18750
Extra nourishment	5000
Loss of earnings for five months	25000
Transportation	5000
Treatment expenses	95600
Damage to clothing	500
Pain and suffering	40000
Loss of amenities	30000
Total	**4,11,850** **(Rupees four lakhs eleven thousand eight hundred and fifty only)**

The Insurance Company has already been found liable by the Tribunal, which we confirm. The Tribunal has granted interest at the rate of 7.5% for the amount awarded and we grant interest at the rate of 9% per annum for the enhanced amount from the date of petition till realisation.

There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellant will be entitled for the release of the amount.

Since the claim is only at Rs.2,88,500/-, the appellant will have to pay court fee for the amount awarded by this Court over and above the claim which will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/