IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

MACA.No. 3026 of 2009
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AGAINST THE AWARD IN OPMV 496/2003 of ADDL.M.A.C.T., TRICHUR DATED 23.12.2008

APPELLANT/PETITIONER:
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SUPRABHA.R.MENON,
W/O. R. RAMACHANDRA MENON, 20/314, "SHREYAS"
POOTHOLE ROAD, P.O POOTHOLE, THRISSUR.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT(S)/RESPONDENTS:
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1. KANNAN, S/O. SREENIVASAN,
   22/407 F, PALAT HOUSE, P.O. KUTTANELLOOR
   THRISSUR DISTRICT.

2. UNITED INDIA INSURANCE CO. LIMITED,
   SIMIS COMPLEX, KURUPPAM ROAD, THRISSUR.

R2 BY ADV. SMT.R.REMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

**P.N.RAVINDRAN & ANU SIVARAMAN, JJ.**

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M.A.C.A. No.3026 of 2009

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Dated this the 4th day of June, 2015

**JUDGMENT**

***P.N.Ravindran, J.***

The appellant is the claimant in O.P.(MV).No.496 of 2003 on the file of the Motor Accidents Claims Tribunal, Thrissur. By award passed on 23.12.2008, the Motor Accidents Claims Tribunal awarded the sum of ₹53,200/- as compensation under different heads and directed the second respondent insurer to deposit the said amount together with interest at 7% per annum from the date of petition till the date of realisation and costs quantified at ₹1,500/-. The claimant has, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

2. We heard Sri. P.V. Chandramohan, learned counsel appearing for the appellant and Smt. R. Rema, learned counsel appearing for the second respondent insurer. Notice to the first respondent was dispensed with for the reason that the second respondent insurer does not dispute its liability to pay compensation. The accident in the instant case took place on 27.9.2002. The appellant claimant was travelling as a pillion rider on a motor bike. The accident took place when the scooter owned and driven by the first respondent hit the motor bike on which appellant/claimant was travelling as a pillion rider

from the rear side. As a result of the accident, the appellant/claimant fell down on the road and sustained wedge compression fracture of L2 vertebra. She was thereupon admitted in Westfort Hospital, Thrissur, where she underwent treatment as an in-patient during the period from 27.9.2002 to 3.10.2002. The appellant/claimant was employed as a teacher in Harisree Vidya Nidhi School, Poonkunnam, Thrissur. These facts are not in dispute.

3. Though the appellant had contended relying on Ext.A9 disability certificate that she had suffered a permanent disability of 20% as a result of the injuries sustained in the accident, the Motor Accidents Claims Tribunal awarded compensation for permanent disability taking the disability as only 10%. For the purpose of computing the compensation payable under the head permanent disability, the Motor Accidents Claims Tribunal estimated the income the appellant/claimant might have obtained after retirement as ₹2,000/- and awarded the sum of ₹19,200/-as compensation for loss of earning capacity. The Motor Accidents Claims Tribunal also awarded ₹10,000/- as compensation for pain and suffering, ₹6,000/- as compensation for loss of leave (the appellant/claimant had availed 67 days leave during the period from 27.09.2002 to 3.12.2002), ₹1,000/- towards transportation expenses, ₹500/- towards damage to clothing, ₹1,000/- towards expenses of a bystander, ₹500/- for extra nourishment and ₹10,000/- towards loss of amenities. The Tribunal

thus awarded a total sum of ₹53,200/- as compensation.

4. The records produced before the Tribunal more particularly Ext.A12 salary certificate issued by the Principal of the school where the appellant was working discloses that she was earning an annual income of ₹46,760/-, the monthly salary being ₹3,897/-. The Tribunal did not award compensation on that basis but awarded compensation for loss of earning capacity after retirement, taking the prospective income after retirement as ₹2,000/- and adopting the multiplier as 8. The appellant was on the date of the accident aged 41 years. The view taken by the Tribunal is that as the appellant/claimant has not lost her employment and she continues to be in service, compensation can be awarded only for loss of earning capacity after retirement. In other words, the Tribunal was of the opinion that notwithstanding the fact that the appellant had suffered a wedge compression fracture of L2 vertebra and has pain in the lowerback and there is a limitation in the normal spinal movement, she is not entitled to any compensation for permanent disability. In our opinion, the view taken by the Tribunal cannot be sustained.

5. The Apex Court has in **B.Kothandapani v. Tamil Nadu State Transport Corporation Limited** [(2011) 6 SCC 420] held that even a non-earning person who is injured in an accident and has sustained permanent disability is entitled to be compensated for the permanent disability. The Apex Court held that apart from the fact

that the permanent disability affects the earning capacity of the person concerned, one has to forgo other personal comforts and even for normal avocation may have to depend on others. In the instant case, it has come out in evidence that as a result of the injury sustained in the accident, the appellant/claimant has pain in the lower back and there is a limitation of 25 degrees in the normal spinal movement. The doctor who issued Ext.A9 disability certificate has certified that the claimant has a permanent whole body disability of 20%. Merely for the reason that Ext.A9 has not been proved by examining the doctor, the Tribunal has reduced the disability from 20% to 10%. In our opinion, in the absence of any challenge to the authenticity and genuineness of Ext.A9 disability certificate, the Tribunal ought not have reduced the degree of disability from 20% to 10%. The Tribunal ought to have in our opinion awarded compensation to the appellant for permanent disability taking the percentage of disability as 20%. Likewise, the multiplicand and the multiplier adopted by the Tribunal are also in our opinion not correct. The appellant/claimant was aged 41 years on the date of the accident. The multiplier to be adopted for computing compensation under the head permanent disability in the case of a person aged 41 years is 14. As stated earlier, the appellant had adduced evidence to show that at the time of the accident she was earning an annual salary of ₹46,760/-. The Tribunal has taken the annual income as ₹24,000/- on the basis that after retirement she would have earned ₹2,000/- per mensem. In our opinion, when there is evidence to show the actual annual income of the claimant as on the date of the accident, the Tribunal could not have declined to take into account the actual income for the purpose of computing the compensation payable for permanent disability. Applying the principles laid down by the Apex Court in **Manickam v. Metropolitan Transport Corporation Limited** [2013 (3) KLT 248] and **B.Kothandapani v. Tamil Nadu State Transport Corporation Limited** [supra], we are of the opinion that the claimant is entitled to be awarded enhanced compensation for permanent disability. The compensation payable would be ₹46,760 X 14 X 20/100 = ₹1,30,928/- which we round off to ₹1,31,000/-. The Motor Accidents Claims Tribunal has by the impugned award awarded only the sum of ₹19,200/- towards loss of earning capacity. The claimant will thus be entitled to receive the sum of ₹1,11,800/- as compensation for permanent disability over and above the compensation awarded by the Motor Accidents Claims Tribunal. The compensation awarded under the other heads cannot in our opinion be said to be meagre or inadequate. We therefore find no good grounds to enhance the compensation awarded under the other heads.

We accordingly allow the appeal and award the sum of ₹1,11,800/- as compensation to the appellant under the head permanent disability over and above the compensation awarded by the

Motor Accidents Claims Tribunal. The second respondent insurer does not dispute the existence of a valid policy of insurance on the date of the accident. It has also not pleaded or proved breach of the policy conditions. The second respondent insurer is therefore directed to deposit the said sum together with interest at 9% per annum from the date of petition till the date of deposit within two months from today. Upon such deposit being made, the amount deposited shall be released to the appellant. No costs.

**P.N.RAVINDRAN**
**JUDGE**

**ANU SIVARAMAN**
**JUDGE**

kp/vpv