

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

MACA.No. 3410 of 2014 ()

AGAINST THE AWARD IN OPMV.NO.825/2012 of M.A.C.T.,
ERNAKULAM, DATED 4.7.2014.

APPELLANTS/RESPONDENTS:-

1. SUSHIL VIJOY ARORA AGED 47 YEARS
S/O.THE LATE KRISHNA VIJOY ARORA, J.M.TOWER, P.T.ROAD
VADUTHALA P.O., KOCHI - 682 023.

2. NAMRATA VIJOY ARORA AGED 23 YEARS
D/O.SUSHIL VIJOY ARORA, J.M.TOWER, P.T.ROAD
VADUTHALA P.O., KOCHI - 682 023.

BY ADV. SRI.ANTONY MUKKATH

RESPONDENT/PETITIONER:-

REMA BAI, AGED 62 YEARS
W/O.RAGHAVA PRABHU, FLAT NO.I-A
SHANTHIVANAMAPARTMENTS, T.D.ROAD, ERNAKULAM -682 011.

BY ADV. SRI.K.V.RAJAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

M.A.C.A.No.3410 of 2014.

Dated this the 26th day of May, 2015.

J U D G M E N T

The owner and driver of the vehicle involved in an accident, which was the subject matter of a claim petition before the Motor Accidents Claims Tribunal are the appellants in this appeal.

2. The respondent is the claimant in the proceedings before the Tribunal. She sustained injuries in an accident took place on 9.3.2012 involving a vehicle owned by the first appellant and ridden by the second appellant. The respondent was aged 62 years at the time of accident. She was a home maker. The case of the respondent was that on 9.3.2012 at about 7.45 am. while she was crossing TD Road, Ernakulam, the second appellant came in a rash and negligent manner in the scooter bearing registration No.KL-7BF-3022 and knocked her down. She

claimed a sum of Rs.1,00,000/- by way of compensation in the proceedings.

3. There was no insurance policy for the vehicle at the time of accident. As such, the owner and rider of the vehicle alone were arrayed as respondents in the claim petition. They contested the claim petition, contending among others, that the vehicle ridden by the second appellant did not knock down the claimant as alleged in the claim petition. According to them, the claimant fell down on the road while crossing the road and sustained injuries.

4. The Tribunal, on an appreciation of the materials on record, found that the the claimant sustained injuries in the accident as alleged by her. The Tribunal also found that the accident occurred on account of the negligence of the second appellant. Accordingly, the Tribunal allowed the claim petition and permitted the claimant to recover a sum of Rs.61,998/- by way of compensation from the appellants. The appellants are

aggrieved by the said decision of the Tribunal.

5. Heard the learned learned counsel for the appellants and the learned counsel for the respondent.

6. The learned counsel for the appellants, relying on the evidence tendered by the second appellant as RW1, contended that there was no accident as alleged by the claimant and that she sustained injuries by falling down on the road fearing accident. He also contended that the quantum of compensation granted by the Tribunal to the claimant is too harsh and exorbitant.

7. Ext.A1 is the FIR in the crime registered by the police in connection with the accident in which the claimant sustained injuries. Ext.A2 is the final report/charge sheet in the crime. In Ext.A2, the police, after due investigation, came to the conclusion that the accident as alleged by the claimant had occurred and that the claimant sustained injuries in that accident. The police officer who has investigated the crime has not been examined. There is no evidence on record to indicate that the investigation

conducted by the police which culminated in Ext.A2 is vitiated in any manner. Further, it has come out in evidence that the second appellant pleaded guilty in the criminal proceedings initiated based on Ext.A2 final report. In the said circumstances, the contention of the appellants that there was no accident as alleged by the claimant cannot be accepted.

8. Coming to the quantum of compensation, out of Rs.61,998/- granted to the claimant by way of compensation, a sum of Rs.41,498/- represents the compensation granted to her towards medical expenses. The said compensation has been granted by way of reimbursement of the medical expenses incurred by the claimant. In addition, the claimant is seen granted only a sum of Rs.4,000/- towards compensation for loss of earnings, a sum of Rs.10,000/- towards compensation for pain and sufferings, a sum of Rs.1,000/- towards compensation for transport expenses and a sum of Rs.5,000/- towards compensation for loss of amenities and

enjoyments in life. True, the claimant being a home maker aged 62 years, there may not be any loss of earnings for her on account of the accident. But, it is seen that no compensation was granted to the claimant towards extra nourishment. It is also seen that only a sum of Rs.5,000/- was granted to the claimant towards compensation loss of amenities and enjoyments in life. On the facts of this case, I am of the view that the claimant is entitled to some more amount as compensation towards extra nourishment and some more amount as compensation towards loss of amenities and enjoyments in life. In the said circumstances, I do not propose to interfere with the compensation granted to the claimant for loss of earnings.

In the result, the appeal is devoid of merits and it is, accordingly, dismissed.

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

Kvs/-

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PA TO JUDGE.