

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 1946 of 2008 ()

AGAINST THE AWARD IN OPMV 2246/2004 of M.A.C.T.,KOTTAYAM DATED
19-05-2008

APPELLANT/PETITIONER:-:

K. ANILKUMAR,ANITHABHAVAN,
PARITHIKUZHY, NATTASSERY, PERUMBAIKKAD,
KOTTAYAM.

BY ADV. SRI.RAJEEV V.KURUP

RESPONDENT(S)/RESPONDENTS:

1. MUHAMMED ALI, VEERAVU COTTAGE,
MAY 1ST ROAD, THAMMANAM, KOCHI -19.

2. NATIONAL INSURNACE CO. LTD.,
REPRESENTED BY DIVISIONAL MANAGER, DIVISIONAL OFFICE,
KOTTAYAM.

3. SUBHASH, KUDILINKAL HOUSE,
GOTHURUTH, KODALMATHURUTH, CHENNAMANGALAM.

R2 BY ADV. SRI.JOE KALLIATH
R1 BY ADV. SRI.M.K.DILEEP KUMAR
R1 BY ADV. SRI.DEEPAK T.NEDUNGADAN
R1 BY ADV. SRI.T.VENUGOPALAN (ALUVA)
R1 BY ADV. SRI. K.D. VINCENT

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.No.1946 of 2008

Dated this the 29th day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the serious injuries sustained by the appellant in a road traffic accident occurred on 3.1.2004 made him to approach this Court by filing the appeal.

2. The sequence of events narrated in the appeal shows that the accident occurred on 3.1.2004, when the appellant, aged 23 years at that time, was proceeding as a pillion rider on the motorcycle bearing No.KL-5/F-3897. When he reached the place of occurrence, a Maruthi Van bearing No.KL-7/AC-7091, owned by the 1st respondent, driven by the 3rd respondent and insured by the 2nd respondent, knocked him down causing serious injuries, which led to the claim petition. In the claim petition preferred by the

appellant, it was contended that he was working as an Executive in a courier company with a monthly salary of more than Rs.4,000/–, which was sought to be substantiated with reference to Ext.A10. Various documents were produced to show the extent of injuries and the other relevant aspects. In the course of proceedings, the disability certificate issued by the Medical Board of the Government Medical College Hospital, Kottayam, certifying the extent of disability as 21.25% was also produced as Ext.A8. Despite this, the Tribunal reckoned only a notional figure of Rs.2,500/– as the monthly income and the extent of disability certified by the Medical Board was reduced to 15%, granting a compensation of Rs.76,500/– towards the permanent disability, which in turn is sought to be interfered by this Court.

2. Heard the learned counsel for the appellant as well as the learned counsel appearing for the Insurance Company.

3. The learned counsel for the appellant submits that the injuries sustained by the appellant are so

grave that he finds it difficult to move freely even as on date. There was absolutely no rhyme or reason for the Tribunal to have reduced the extent of disability and, similarly, no satisfactory explanation is forthcoming as to why the certified income proved by the appellant by producing the relevant certificate was simply brought down to Rs.2,500/- per month, thus resulting in substantial reduction in the actual compensation payable. The learned counsel submits that the challenge is raised only in respect of the quantum of compensation awarded for permanent disability and as such, no grievance is surviving with regard to any other heads.

4. During the course of hearing, a copy of the disability certificate issued by the Medical Board is made available for perusal of this Court. We have gone through the relevant aspects, particularly with regard to the injuries. The injuries sustained by the appellant as referred to in paragraph 4 of the award are in the following terms:

“Fracture supra condylar, type 1 open ®
femur, fracture ® femur inter condylar,

fracture both bones @ leg, fracture @ medial malleolus with distal vascularity, compression fracture L3, lacerated wound behind @ ankle, lacerated wound 4x5 cm front of @ knee and lacerated wound 3 x 2cm lateral @ ankle.”

5. The consequences have been discussed by the Tribunal in paragraph 13. Considering the relevant facts which are rather undisputed and also going by the contents of the disability certificate issued by the Medical Board, this Court finds that the deviation sought to be made by the Tribunal by reducing the extent of disability is not correct or proper and we restore the disability certified by the Medical Board as 21.25% to be taken for working out the compensation. Coming to the multiplicand, the case of the appellant was that he was employed as an Executive of a private courier company and the salary certificate was produced as Ext.A10. The appellant was an able bodied youth of 23 years at the time of accident and he was having a Diploma issued by the Polytechnic in the relevant trade and as such, he was technically qualified as well. Considering these aspects and also

considering the money value as on the relevant date of accident, we find that the Tribunal ought to have reckoned Rs.4,000/- as the monthly income for working out the compensation. We accept the said figure and the compensation for the permanent disability is reworked as follows: $4000 \times 12 \times 21.25/100 \times 17$, which comes to Rs.1,73,400/-. After giving credit to a sum of Rs.76,500/- awarded by the Tribunal, the balance is Rs.96,900/-. The same is granted to the appellant. The said amount shall carry interest @ 9% per annum from the date of claim petition filed before the Tribunal till realisation. Since the policy is admitted, the Insurance Company is directed to satisfy the said amount within one month from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.