

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

MACA.No. 2448 of 2008 ()

AGAINST THE AWARD IN OPMV 960/2002 of M.A.C.T., THALASSERY DATED 28-02-
2008

APPELLANT/PETITIONER:

JIJEESH.P.P
AGED 25 YEARS, PARAMBANADATH HOUSE, P.O.EACHUR
KANNUR DISTRICT.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENTS/RESPONDENTS:

1. HAREESH.K.P
KUNNUMMAL HOUSE, P.O.EDAKKAD (DIED)
2. K.P.RAMESHAN, S/O.CHANDUKUTTY,
KUNNUMMAL HOUSE, P.O.EDAKKAD, KANNUR DISTRICT.
3. UNITED INDIA INSURANCE CO.LTD.,
SOUTH BAZAR, KANNUR.
4. NISHA P., W/O.(LATE) HAREESH K.P
DIVYASREE, ELAYAVOOR SOUTH, P.O.MUNDAYAD
KANNUR DISTRICT.
5. MADHAVI, W/O.CHANDUKUTTY,
KUNNUMMAL HOUSE, EDUKKAD P.O, KANNUR DISTRICT.

BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.2448 of 2008

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Dated this the 17th day of July, 2015

JUDGMENT

Anu Sivaraman, J.

The appellant is the claimant in O.P.(MV).No.960 of 2002 on the file of the Motor Accidents Claims Tribunal, Thalassery. The claim petition was filed in respect of the personal injuries suffered by the appellant in a motor accident which occurred on 21.01.2002. The appellant was a pillion rider on a motor cycle bearing registration No.KL-13-G-331 which collided with a pick-up van bearing registration No.KRC-4815, as a result of which the appellant suffered serious injuries. It was his case that he was admitted in the City Hospital Research and Diagnostic Centre, Mangalore till 03.02.2002 and was again admitted in that hospital from 23.03.2002 to 28.03.2002. In the claim petition he contended that he was aged 20 years at the time of the accident and was a mason by profession, having an income of Rs.5,000/- per month. He claimed a total compensation of Rs.3,00,000/- from respondents 1, 2 and 3 who are the driver, owner and insurer respectively of the pickup van.

2. While the claim petition was pending, the first respondent died and his legal representatives were impleaded as supplemental respondents 4 and 5. The second respondent, the owner of the pickup van and the supplemental fourth respondent remained ex parte. The supplemental fifth respondent filed a written statement, denying the negligence of the first respondent and contending that he is not liable to pay any compensation. The third respondent the insurer of the pick-up van filed a written statement admitting the insurance but disputing its liability. The claimants in O.P.(MV).No.959 of 2002 and connected O.P.(MV).No.960 of 2002, which was tried along with the same, were examined as PW1 and PW2 and Exts.A1 to A13 and Exts.X1 and X2 were marked. The Tribunal, after considering the pleadings and the materials on record, held that the accident occurred due to the negligence of the first respondent. The medical bills and transportation charges amounting to Rs.74,345/- was awarded by the Tribunal. Exhibit A7 wound certificate and A8 series of discharge summaries disclose that the claimant had suffered comminuted fracture of the right patella and fracture of the shaft of the right femur. The discharge summaries also show that

the appellant had undergone treatment as an inpatient for 18 days in two spells. Since Ext.X2 disability certificate issued by the medical board attached to the Pariyaram Medical College Hospital did not disclose any disability, no amount was awarded under the head compensation for disability. The Tribunal however awarded the sum of Rs.15,000/- as compensation for pain and suffering. Loss of income for a period of three months at the rate of Rs.1500/- per month was granted towards loss of earnings. Bystander's expenses amounting to Rs.2700/- was also granted. Incidental expenses under the head reviews and extra nourishment were also awarded at the rate of Rs.500/- each. A total compensation of Rs.98,000/- with interest at 7% was thus awarded by the Tribunal. The claimant has, dissatisfied with the compensation awarded by the Tribunal filed this appeal.

3. We heard Sri.P.U.Shailajan, learned counsel appearing for the appellant and Sri.N.S.Mohammed Usman, learned counsel appearing for the third respondent. The learned counsel for the appellant contended that the amount awarded as compensation for the grievous injuries suffered by the appellant who was an able bodied man aged 20 years at the time of accident is meagre and

insufficient. He further stated that the appellant claimant had given evidence in support of the contentions raised by him in the claim petition and therefore, the refusal on the part of the Tribunal to accept the monthly income as claimed in the claim petition for computing loss of earnings is unjustified. The learned counsel contended that as the claimant had suffered serious injuries as noted by the Tribunal and had undergone hospitalisation as an inpatient for a total period of 18 days in two spells, the amount awarded as compensation for pain and suffering and bystander's expenses is inadequate. It is also submitted that no amounts have been granted towards loss of amenities of life.

4. We have gone through the pleadings and the materials on record. The claimant was examined as PW2 and he had given evidence in support of the contentions raised in the claim petition. No evidence had been adduced by the respondents before the Tribunal to discredit the claim of PW1. In the above circumstances, we are of the opinion that the Tribunal ought to have assessed the income of the appellant by accepting his claim that he was a mason aged 20 years. We are of the opinion that the Tribunal should have on a modest estimate assessed the income of the appellant as

Rs.4,000/- per month. Computed on that basis and taking into account the serious nature of the injuries suffered by the appellant, we are of the opinion that the loss of earnings should have been assessed at least for a period of 4 months. The appellant would thus be entitled to an amount of Rs.16,000/- as loss of earnings for a period of 4 months. Deducting the sum of Rs.4500/- awarded by the Tribunal under that head, the appellant will be entitled to a further amount of Rs.11,500/- towards loss of earnings. The injuries sustained by the appellant are serious in nature and considering the numbers of days of inpatient treatment undergone by him, we are of the opinion that the appellant shall be entitled to a further sum of Rs.5,000/- as compensation under the head pain and suffering over and above the sum of Rs.15,000/- awarded by the Tribunal. Further, as the appellant had sustained two fractures, including the fracture of the patella, we are of the opinion that the refusal on the part of the Tribunal to grant any amounts towards loss of amenities was not justified. We therefore award an amount of Rs.25,000/- as compensation towards loss of amenities to the appellant. The compensation awarded under other heads, in our opinion, does not warrant any interference.

In the above circumstances, the appeal is allowed in part and an enhanced compensation of Rs.41,500/- is awarded to the appellant. The third respondent insurer shall deposit the said amount together with interest @ 9% per annum from the date of petition till the date of deposit before the Motor Accidents Claims Tribunal, Thalassery within two months from the date of receipt of a certified copy of this judgment. Upon such deposit being made, the sum of Rs.41,500/- and the interest thereon shall be disbursed to the appellant/claimant. No costs.

P.N.Ravindran, Judge

Anu Sivaraman, Judge

sj