

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

MACA.No. 2574 of 2008

AGAINST THE AWARD IN OPMV 717/2002 of ADDL. MACT,
ALAPPUZHA. DATED 11-10-2007.

APPELLANT(S)/PETITIONER:

RAJESH KUMAR, AGED 26 YEARS,
S/O.AMBUJAKSHAN, PATHILCHIRA, PULINKUNNU,
ALAPPUZHA.

BY ADV. SRI.A.T.ANILKUMAR

RESPONDENT(S)/RESPONDENTS:

1. G.RANJITH DAS, AGED 25 YEARS,
S/O.N.GURUDAS, THADATHARAKUTHU PUTHENVEEDU,
JAWAHAR COLONY, TRIVANDRUM. (DELETED)

2. B.SURESH, S/O.BHANU, VAYALIRAMPIL,
CHARUMMOODE P.O., MAVELIKKARA. (DELETED)

3. THE UNITED INDIA ASSURANCE CO.LTD.,
DIVISIONAL OFFICE, MULLACKAL, ALAPPUZHA.

R1 AND R2 ARE DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE APPELLANT AS PER ORDER DATED 9/4/2015
IN I.A.NO.1326/15.

R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 25-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A. No.2574 of 2008

Dated this the 25th day of September, 2015

JUDGMENT

Harilal, J.

The appellant is the claim petitioner in O.P.(MV) No.717/2002, on the files of the Motor Accidents Claims Tribunal, Alappuzha. The above claim petition was filed under Sec.166 of the Motor Vehicles Act, claiming compensation for the injuries, and the resultant disability caused to him in a road traffic accident.

2. According to the appellant, on 6/2/2002 at 2 a.m., while he was travelling in the jeep bearing Registration No.KL4/H-7280 along the Pallikuttumma - Pulincunnu road, when the jeep reached in front of

the Telephone Exchange, the jeep over turned and thereby, the appellant has sustained severe injuries. The accident was caused by the rash and negligent driving of the 1st respondent, who was the driver of the jeep. The jeep was owned by the 2nd respondent and insured with the 3rd respondent. The 2nd respondent is vicariously liable to compensate the appellant for his sufferings and disabilities caused to his body and the 3rd respondent/Insurance Company is liable to indemnify the 2nd respondent. Thus, the respondents are jointly and severally liable to pay compensation to him. He claimed an amount of Rs.6 lakhs as compensation from the 3rd respondent.

3. The 1st and 2nd respondents were set ex parte; but the 3rd respondent filed the written statement admitting the accident and policy coverage of the jeep. According to the 3rd respondent, when the driver tried to avoid a gutter on the road, the jeep over turned and as a result, the accident occurred and there was no rashness or negligence on the part of the

1st respondent. The nature of injuries, the amounts claimed under the various heads and the expenses allegedly incurred are also disputed.

4. The evidence consists of Exts.A1 to A10 produced and marked on the side of the appellant only. No oral evidence had been adduced either by the appellant or the respondents. After considering the evidence on record, the Tribunal passed the impugned award granting Rs.2,02,250/- as compensation. The inadequacy of the quantum of compensation is under challenge in this appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the 3rd respondent.

6. The learned counsel for the appellant submits that the quantum of compensation determined under various heads are inadequate. The monthly income reckoned by the Tribunal is inadequate and unreasonable. Similarly, the amounts quantified under the heads of pain and suffering, loss of amenities etc.,

are disproportionate with the severity of the injuries suffered by him and long duration of time required for the treatment.

7. Per contra, the learned counsel for the 3rd respondent submits that the amounts quantified under the different heads are reasonable and stand in conformity with the evidence on record and the just compensation contemplated under Sec.168 of the M.V. Act. Therefore, the appellant is not entitled to get enhancement under any of the heads.

8. The point to be considered is, whether the Tribunal has granted compensation in conformity with the just compensation contemplated under Sec.168 of the M.V. Act and also the evidence on record. According to the appellant, at the time of accident, he was aged 26 years and the accident was occurred in the year 2002. Though he claimed that he is a carpenter by profession, no evidence had been adduced to substantiate the said contention. But having regard to the money value and other relevant

facts prevailing in that period, we feel that the monthly income fixed at Rs.1,500/- is inadequate and the same would stand enhanced to Rs.2,500/-. Ext.A5 wound certificate and Ext.A8 discharge summary show the grievous nature of the injuries sustained by him and Ext.A9 series of medical bills show that he had incurred Rs.1,70,815.14 towards treatment expenses. In view of the severity of injuries evidenced by Exts.A8 and A9, the three months period taken for reckoning the loss of earning is inadequate and the same would stand enhanced to six months. Hence the appellant is entitled to get Rs.10,500/- more in addition to the amount granted by the Tribunal under this head. For the same reason, the amount granted for bystander's expenses would stand enhanced to Rs.2,000/- and the balance payable comes to Rs.1,000/-. Ext.A8 discharge summary shows that the appellant had suffered head injury and fracture of mandible which was managed by open deduction and intra maxillary fixation. There was also a fracture to the right olecranon which was

also managed by open reduction and external fixation. Further, it shows that there was bone loss. Having regard to the grievous nature of the aforesaid injuries and the nature of treatment under which he had undergone, we feel that the amount quantified under the head of loss of amenities is also inadequate and the same would stand enhanced to Rs.25,000/- and the balance payable is Rs.5,000/-. It is true that the petitioner has failed to produce disability certificate. But, we have meticulously gone through the nature of injuries and the resultant damage caused to him thereon, and the nature of treatment under which he had undergone and we feel that it is just and proper to award a lump sum of Rs.50,000/- towards the permanent damage caused to him.

9. Thus, the appellant is entitled to get a total additional compensation of Rs.66,500/- (Rupees Sixty six thousand and five hundred only). The appellant is also entitled to get interest at the rate of 8% p.a. for the enhanced amount. The 3rd respondent/Insurance

Company is directed to deposit the total compensation within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge