IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

MACA NO. 476 OF 2013

AGAINST THE COMMON AWARD DATED 28.05.2011 IN OP(MV) 573/2007 ON THE FILES OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/PETITIONER:

A.ANWAR
S/O. ABDUL KAREEM, THADATHINTEE MEKKOTH VEETTIL, SASTHAMKOTTA BHAGOM, VENGA.P.O., MYNAGAPALLY VILLAGE, KOLLAM DISTRICT-690569.

BY ADVS.
SRI.R.SUDHISH
SMT.M.MANJU
SRI.K.R.RANJITH

RESPONDENTS/RESPONDENTS:

1 SABU JOSEPH
S/O. JOSEPH, KUNNUPURATH HOUSE, 269/10, THELLIPADY BHAGOM, PERUMBANKKUTHU KARA, MANKULAM.P.O., IDUKKI DISTRICT-685565.

2 THE UNITED INDIA INSURANCE CO.LTD.
BRANCH OFFICE, KANATTU SHOPPING COMPLEX, KALLARKUTTY ROAD, ADIMALY-685561.

3 THE ORIENTAL INSURANCE COMPANY LTD.
ANNAPOORNI MANDIR, CULLEN ROAD, MULLACKAL, ALAPPUZHA-688011.

BY ADVS.
REKHA NAIR
S.ARUN RAJ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was the petitioner in O.P.(M.V) No.573/2007 on the files of the Motor Accidents Claims Tribunal, Ernakulam. The said claim petition was submitted by him seeking compensation for the injuries sustained to him in a motor accident that occurred on 15.01.2007.

2. According to the appellant, the accident occurred when he was travelling in a car, it collided with a Jeep bearing registration No. KL-5 D-4023 driven and owned by the 1st respondent. The said vehicle was insured with the 2nd respondent, and the 3rd respondent was the insurer of the car in which the appellant was travelling. According to him, he was 25 years old at the time of the accident and working as a Network Engineer in M/s Hi-Tech Export, and the monthly income claimed was Rs.10,000/-. The claim petition was submitted in such circumstances as he sustained serious injuries in the accident.

3. The 1st respondent filed a written statement denying the negligence on his part and according to him, the accident occurred due to the negligent driving of the car in which the

appellant was travelling. The 2nd respondent filed a written statement admitting the insurance coverage for the jeep, but they also denied the negligence on the part of the 1st respondent. They disputed the quantum of compensation as well. The said claim petition was tried along with O.P.(.V) No.565/2007, filed by the driver of the car in which the appellant was travelling.

4. The evidence in the said claim petition consists of Ext. A11 to A15 from the side of the appellant and no evidence was adduced from the side of the respondents. After the trial, the Tribunal came to the conclusion that the accident occurred due to negligence on the part of the 1st respondent in driving the car and being the insurer of the said vehicle; the 2nd respondent herein was held liable to pay the compensation. The quantum of compensation was fixed as Rs.1,87,059 and the said amount was directed to be deposited by the 2nd respondent with interest at the rate of 7.5% per annum from the date of petition till realisation. This appeal is submitted by the appellant in such circumstances seeking enhancement of compensation.

5. Heard, Smt.Manju M, the learned counsel appearing for the appellant, Sri. S Arun Raj, the learned counsel appearing for

the 2nd respondent and Smt. Rekha Nair, the learned counsel appearing for the 3rd respondent.

6. The only dispute relates to the quantum of compensation. The learned counsel for the appellant points out that the amounts awarded by the Tribunal under various heads are grossly inadequate but the learned counsel appearing for the 2nd respondent would oppose the said contention by pointing out that a reasonable amount has been awarded and hence no interference is required.

7. I have carefully gone through the records. The appellant claimed to be a Network Engineer working in a private establishment with a monthly income of Rs.10,000/-. To substantiate the employment and monthly income, Ext.A13 and A14 documents were produced. A14 is the salary certificate, as per which he was getting an amount of Rs.10,000/- per month. However, the Tribunal did not accept the same, on the ground that the same was not properly proved by examining the person who issued the said certificate. However, it is evident from the records that he was 25 years old at the time of the accident and he was working as a network engineer. His qualifications are not seriously

disputed. Therefore, I am of the view that the monthly income of Rs.10,000/- as claimed by him was a probable amount for a person of that qualification. Therefore, the said amount can be accepted. The monthly income, in this case, can have relevance only with respect to loss of earnings. To substantiate the loss of earnings, the appellant relied on an Ex.A13 certificate, which would indicate that he was forced to avail leave for a period of 41 days on loss of pay. In such circumstances, the loss of earnings can be granted for the said period. The said amount would come to Rs.15,785/-. The amount already awarded by the Tribunal, under this head is Rs.6,000/- and thus the additional compensation would come to R.9,785/-.

8. The next ground highlighted by the learned counsel for the appellant is the inadequacy in the compensation awarded for attendant expenses. It is evident from the records that he underwent inpatient treatment for a period of 23 days. The Tribunal awarded Rs.2,750/- only, which appears to be on the lower side. When attendant expenses is calculated at Rs.200/- per day, the said amount would come to Rs.4,600/-. The amount

awarded by the Tribunal is Rs.2,750/-; thus, the additional compensation would come to Rs.1,850/-.

9. The next aspect is compensation for pain and suffering, and the amount awarded by the Tribunal under this head is Rs.20,000/-. Ext. A11 is the wound certificate as per which the appellant sustained the following injuries:

> "Nasal bone fracture, Bleeding wound over the left eyelid, Multiple lacerated wound over left eyelid 5 X4 cm, 2X1 cm, profuse bleeding from supraorbital and supratrochlear vessels, 5X4cm laceration with tissue loss over the forehead, 3cm laceration scalp, 2X1cm laceration with tissue loss over the bridge of the nose."

The nature of the injuries, as mentioned above, would show the serious nature of the same, and he had undergone prolonged treatment as well, even after his discharge. Therefore, I am of the view that a further sum of Rs.15,000/- can be granted under the head of pain and suffering.

10. Similarly, the amount awarded towards the loss of amenities was Rs.12,000/-. The learned counsel for the appellant points out that, consequent to the injuries, he suffered disfigurement as well as other difficulties consequent to the same.

Considering the aforesaid aspects, I deem it appropriate to grant a further sum of Rs.8,000/- towards loss of amenities and disfiguration. Thus, the total additional compensation is determined as Rs. 34,635/-(9,785 + 1,850 + 15,000 + 8,000).

In the result, this appeal is allowed. The award dated 28.05.2011, passed by the Motor Accidents Claims Tribunal, Ernakulam in O.P(M.V) No. 573/2007 is hereby modified by granting an additional compensation of Rs.34,635/- (Rupees thirty four thousand six hundred and thirty five only) and the said amount shall be deposited by the 2nd respondent, with interest as ordered by the Tribunal and with the proportionate costs within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

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