IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 11TH DAY OF MARCH 2024 / 21ST PHALGUNA, 1945

MACA NO. 1131 OF 2013

AGAINST THE ORDER/JUDGMENT DATED 06.11.2012 IN OPMV NO.346 OF 2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL TIRUR

APPELLANT/S:

N.M.ABDUL KHADER
S/O.MUHAMMED, NALAKATH KOOLYIL HOUSE, SHARJHA COTTAGE, PERUMBLAVU, KARIKKAD P.O., THRISSUR DISTRICT.

BY ADVS.
SRI.A.X.VARGHESE
SRI.A.V.JOJO

RESPONDENT/S:

1 *MUHAMMED ALI M.K. (DIED)*
S/O.MAMMU, MADAKKATTEL HOUSE, KOLOLAMBA, P.O.EDAPPAL, MALAPPURAM DISTRICT, PIN - 679 576. (R.C.OWNER).

2 *BABU K.R.*
AGED 37 YEARS
S/O.RAMANKUTTY, KARATHOOR HOUSE, KUTTIPALA, VATTAMKULAM, P.O.MALAPPURAM DISTRICT. (DRIVER)

3 *NATIONAL INSURANCE CO. LTD.*
DIV.NO.10, FLAT NO.101, N-1, BHC HOUSE, CONNAUGHT PLACE, NEW DELHI - 110 001. (INSURER)

4 *SULAIKHA LEGAL REPRESENTATIVE OF 1ST DEFENDANT*
AGED 33 YEARS
W/O.MUHAMMED ALI M.K., (LATE), MADAKKATTEL HOUSE, PULIKKAD, KOLOLAMBA P.O., EDAPPAL, MALAPPURAM DISTRICT, PIN - 679 576.

BY ADVS.
SRI.P.G.GANAPPAN
SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SMT.RABIA BEEGAM T.K.
SRI.JOBI.A.THAMPI
SMT.ASHIFA YOUSEFF
SMT.M.KABANI DINESH
SRI.C.M.EBRAHIM
SRI.SHOUKATH HUSAIN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 11.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was the petitioner in O.P.(MV). No.346 of 2010 on the file of the Motor Accidents Claims Tribunal, Tirur. The said claim petition was submitted by him seeking compensation for the injuries sustained to him in a motor accident that occurred on 28.10.2008.

2. According to the appellant, the accident occurred when the motorcycle ridden by him was hit by a car bearing registration No.KL-54/3402, driven by the 2nd respondent in a rash and negligent manner. The said vehicle was owned by the 1st respondent who was reported to be no more and hence as his legal representative, the supplementary 4th respondent was impleaded. The said vehicle was insured with the 3rd respondent. According to the appellant, he was working as an accountant in Sharjah and was earning a monthly income of 12,500/- Dirhams, which was equivalent to Rs.1,37,000/-. He was aged 47 years and sustained serious injuries, which resulted in physical disability as well. The claim petition was submitted in such circumstances.

3. The 3rd respondent alone contested the matter by filing a written statement, wherein they admitted the coverage of the

policy. However, they disputed the negligence on the part of the 2nd respondent. They also disputed the quantum of compensation.

4. To substantiate the contentions, the appellant got himself examined as PW1 and as documentary evidence, Ext.A1 to A16 series were marked. The disability certificate issued by the District Medical Board, Government Hospital, Manjeri was marked as Ext.C1. After the trial, the Tribunal came to the conclusion that the accident occurred due to the negligence of the 2nd respondent and being the insurer, the 3rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.1,65,885/- and the said amount was directed to be deposited with 9% interest per annum from the date of petition till realization. This appeal is submitted in such circumstances.

5. Heard Sri.Jojo A.V., learned counsel for the appellant and Sri.P.G.Ganapan, learned counsel for the 3rd respondent.

6. The main contest in this case relates to the quantum of compensation. The learned counsel for the appellant points out that the Tribunal failed to properly consider the monthly income of the appellant, which he used to receive from abroad, while assessing the compensation for disability and also did not award any compensation for loss of income. The learned counsel for the

3rd respondent, on the other hand, pointed out that, as far as the compensation for loss of earning power is concerned, same was properly assessed by the Tribunal and even though 22% disability was assessed by the Medical Board, the Tribunal found that the said disability did not affect his earning capacity, taking note of the specific nature of the employment in which he was engaged in. Therefore, no interference is warranted as regards the compensation awarded under the said head. Besides the same, with respect to the compensation for loss of earnings, the Tribunal entered into a categorical finding that he came to India on leave from abroad and he conceded while examination as PW1 that the company will pay the salary for the period of leave. Therefore, the claim under the said head is also not sustainable, pointed out by the learned counsel for the 3rd respondent.

7. I have carefully gone through the records. The first aspect is the compensation for disability and consequential loss of earning capacity. The disability was assessed by the Medical Board as 22%. Basis of the said assessment was injuries such as the partial ankylosis of left ankle, stiffness of mid-tarsal joint of left foot, partial ankylosis of first MTP joint of left foot rendering it difficult for him to squat. Considering the said aspect, the Medical

Board assessed the locomotive disability of 20% and further assessed 2% disability taking note of the fact that he has recurrent attacks of irritability following the accident. The Tribunal scaled down the disability to 20%. As far as the said finding of scaling down the percentage of disability is concerned, I find some force in the case put forward by the learned counsel for the appellant. When a competent Medical Board consisting of expert doctors have assessed the percentage of disability, the same should not have been scaled down by the Tribunal by sitting in appeal over the same. Expertise of the doctors in the Medical Board cannot be ignored while considering the percentage of disability in this regard. Therefore, unless there are serious discrepancies in making such an assessment, no interference in their findings can be made by the Tribunal. In this case, considering the nature of the disability and the assessment made by the Tribunal, I find no justifiable reason to scale down the disability. Therefore, the percentage of disability as made in the said certificate can be accepted.

8. The next aspect relates to the monthly income of Rs.10,000/-. Of course, it is true that the appellant produced Ext.A16 series of documents to show the conditions of his

employment and the salary. However, the Tribunal did not accept the same on the ground that the said document was not properly proved. Yet another reason for not accepting the same was that, considering the nature of injuries, it is highly unlikely that the same would affect the earning capacity of the appellant. On carefully going through the records, I find that the said finding is a probable one. It is noted that the appellant was an accountant and the injuries sustained by him on the lower limb. As far as the impact of such injury on the avocation of an accountant is concerned, the same may not affect his capacity to earn. Therefore, the monthly income as claimed by the appellant, even if it is proved, need not be accepted as such. However, the fact that the appellant will have some difficulties and inconvenience in pursuing his avocation is a matter which cannot be ignored. At this juncture, the learned counsel for the appellant specifically highlighted that while being examined as PW1, he had categorically stated that, after the accident, he went back and four months after he reached the Gulf, he returned back during the month of May, after cancelling his Visa, even though, he had a valid Visa valid for three years. The reason for cancellation of visa is stated as his inability to carry out the employment of the

accountant. However, the statement of PW1 by itself cannot be relied on for arriving at the said finding. This is particularly because, there is absolutely no evidence forthcoming to conclude that the cancellation of Visa was due to the medical reasons consequent to the physical disability suffered by him. Moreover, as mentioned above, when the nature of the disability and the nature of employment are taken into consideration, the contention of the appellant to the effect that he was compelled to cancel the Visa consequent to the injuries, cannot be accepted, as it is highly unlikely. It is also to be noted in this regard that the disability mentioned by him in his chief examination is that he has some difficulty squatting and he is unable to flex the fingers on his leg as well. It is also discernible from the records that, again, the appellant went back to Sharjah for employment. Thus, in the absence of any specific finding to show that he could not pursue his employment due to the injuries in the accident, I find that the view adopted by the Tribunal is probable.

9. However, even after fixing the monthly income as Rs.10,000/- and accepting the physical disability, the Tribunal awarded only a lumpsum amount of Rs.1,00,000/- towards disability and loss of amenities combined together. This

assessment appears to be not proper. The Tribunal ought to have awarded separate compensation under this head, by applying multiplier method. As far as the compensation for disability is concerned, the amount can be assessed by fixing the monthly income as Rs.10,000/- and taking the percentage of disability as 22% as observed above. The appellant was aged 47 years at the time of the accident and the multiplier applicable was 13. Thus, while re-assessing the compensation for the disability with the above criteria, the amount would come to Rs.3,43,200/- [10000 x 12 x 13 x 22/100]. The amount already awarded by the Tribunal is Rs.1,00,000/- and thus the additional amount would come to **Rs.2,43,200/-**.

10. The next contention is with respect to the loss of earnings. The appellant had claimed an amount of Rs.4,12,500/- towards loss of earning, but no amount was awarded. The learned counsel for the appellant vehemently contended that the finding of the Tribunal, in not granting any compensation under this head was not proper. On carefully scrutinizing the entire materials, I find it as a probable view. It is to be noted in this regard that, it is the specific case of the appellant that, he sustained injuries when he came to his native place on leave. It has also came out in

evidence that after the accident he went back to his place of employment on 27.01.2009 and joined duty. In cross examination, he also admitted that during the period of leave, he continued to receive his salary. Therefore, it is clear from the records that there was no actual loss of income, as he continued to receive his regular monthly salary during his treatment period, which also happened to be his leave period. Hence, I hereby uphold the finding of the Tribunal in this regard.

11. However, even while not granting any compensation for loss of earnings due to the reason mentioned above, the fact that he was compelled to spent his leave undergoing treatment is a factor which cannot be ignored. It is evident from the records that, after years of employment abroad, he came to his native place to meet his dear and near, with an intention to spent time with them. However, due to the injuries sustained and the treatment availed, he lost that valuable period and this is something which has to be compensated. Even though the said loss cannot be assessed in terms of money, for the purpose of granting compensation, it has to be valued in monetary terms. Besides the same, the nature of injuries sustained by and the consequential disability arising therefrom must have caused serious inconvenience to him, while

leaving his life. Therefore, that is also a matter to be taken into consideration. The Tribunal awarded a total amount of Rs.100,000/- towards loss of amenities and loss of earning capacity together. I have already appropriated Rs.100,000/- to the amount fixed by this Court towards disability and therefore, the appellant is entitled to get a separate compensation for loss of amenities. It is evident from the records that he sustained serious injuries which compelled him to undergo inpatient treatment for 25 days and it resulted in permanent disablement of 22% as well. Therefore, I hereby award an amount of **Rs.35,000/-** under the head of loss of amenities and a further sum of **Rs.25,000/-** towards the compensation for the non-utilization of the leave availed by him.

12. In addition to the above, the appellant was granted Rs.2,500/- towards bystander expenses even though he was an inpatient for 25 days. Considering the period of the accident and other relevant circumstances, I grant a further sum of **Rs.2,500/-** under that head also. Thus, the total additional compensation is fixed as Rs.3,05,700/- [243200+35000+25000+2500].

In the result, this appeal is allowed. The award dated 06.11.2012 passed by the Motor Accidents Claims Tribunal, Tirur,

in O.P(M.V) No.346/2010 is hereby modified by granting an additional compensation of Rs.3,05,700/- (Rupees three lakhs five thousand and seven hundred only) and the said amount shall be deposited by the 3rd respondent with interest at the rate of 8% per annum from the date of petition till realisation and with proportionate cost within a period of three months from the date of receipt of a copy of this judgment. It is further ordered that the claimants shall furnish the details of the PAN Card, AADHAR Card and Bank details to enable the Insurance Company to make the deposit as ordered above, within a period of one month from the date of receipt of a copy of this judgment. In case, they fail to furnish the said details, it shall be open for the Insurance Company to deposit the said amount before the Tribunal.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

DG/rpk/12.3.24