IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
THURSDAY, THE 25TH DAY OF JULY 2024 / 3RD SRAVANA, 1946

MACA NO. 2521 OF 2019

AGAINST THE AWARD DATED 03.12.2018 IN OP(MV) NO.567 OF 2014 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, THALASSERY

APPELLANT/PETITIONER:

PRASANNA P.V.,
AGED 33 YEARS,
W/O. RATHEESH, MATHANKULAGARA HOUSE,
IRIVERI, P.O.IRIVERI, KANNUR DISTRICT.

BY ADV C.P.PEETHAMBARAN

RESPONDENTS/RESPONDENTS:

1 NIDHEESH C.K.,
S/O. PURUSHOTHAMAN, CHETTIYANKANDY HOUSE, MAVILAYI,
P.O.MAVILAYI, KANNUR DISTRICT-670 622.

2 K.V.VIJAYAN (DIED).

3 THE ORIENTAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, S.N.PARK ROAD, KANNUR-670 001.

4 RETHI,
W/O.VIJAYAN, SREEBHAVANAM, POTHUVACHERI, P.O.KADACHIRA,
KANNUR DISTRICT-670 621.

5 **RENJITH P.K.,**
S/O.VIJAYAN, SREEBHAVANAM, POTHUVACHERI, P.O.KADACHIRA, KANNUR DISTRICT-670 621.

6 **RATHEESHAN,**
S/O.VIJAYAN, SREEBHAVANAM, POTHUVACHERI, P.O.KADACHIRA, KANNUR DISTRICT-670 621.

BY ADV SRI.A.R.GEORGE, SC, ORIENTAL INSURANCE CO.LTD.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal is at the instance of the claimant in OP(MV)No.567 of 2014 on the file of Additional Motor Accidents Claims Tribunal, Thalassery, impugning the award on the ground of inadequacy of compensation.

2. On 03.04.2014, at 4.45 p.m., while the appellant was travelling in KL-13/T-2577 bus, driven by the 1st respondent, due to his rash and negligent driving, the bus dashed against a school bus, and she sustained serious injuries. She sustained injuries of multiple lacerations and tendon injury. She was a 28 year old coolie, earning monthly income of Rs.10,000/-. She approached the Tribunal claiming compensation of Rs.6,00,000/-. But learned Tribunal awarded only Rs.1,30,106/-. Hence this appeal.

3. The 1st respondent was the driver of the offending stage carriage, 2nd respondent was its owner and the 3rd respondent was its Insurer. Since the 2nd respondent-owner passed away, his legal heirs were impleaded as additional respondents 4 to 6. The accident as well as the insurance of

the offending stage carriage is admitted by the 3rd respondent-Insurer. But according to them, the compensation awarded by the Tribunal is just and reasonable and hence it needs no modification.

4. Now this Court is called upon to answer whether there is any illegality, irregularity or impropriety in the impugned award, warranting interference by this Court.

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

6. Learned counsel for the appellant would submit that though the appellant was earning monthly income of Rs.10,000/-, the Tribunal fixed her notional income @ Rs.6,000/- only. He would rely on the decision **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [AIR 2011 SC 2951]**, to say that a coolie worker was eligible to get notional income fixed @ Rs.9,500/- in the year 2014. Accepting that argument, this Court is inclined to fix her notional income @ Rs.9,500/- per month.

7. Learned Tribunal assessed loss of earning for a period of three months. The appellant suffered multiple lacerations on her right hand and tendon injury of third, fourth and fifth fingers. She was a coolie worker and the tendon injuries were on the right hand. So, this Court is inclined to take her loss of earning for a period of six months. @ Rs.9,500/- per month, she is entitled to get Rs.57,000/-. After deducting Rs.18,000/- awarded by the Tribunal, she is entitled to get the balance Rs.39,000/-.

8. Towards extra nourishment, only Rs.1,000/- was awarded by the Tribunal. She was hospitalised for 4 days, and she had suffered tendon injury of three fingers on her right hand. So, this Court is inclined to award Rs.1,000/- more under the head 'extra nourishment'.

9. Towards bystander expenses, no amount was awarded by the Tribunal. At least during the period of hospitalisation, she might have been in need of a bystander, since she had suffered multiple tendon injury on her right hand. @ Rs.500/- per day, for 4 days of hospitalisation, the appellant can be

awarded bystander expenses of Rs.2,000/-.

10. Towards pain and suffering, learned Tribunal awarded Rs.30,000/-. Since there was multiple tendon injury with hospitalisation of 4 days, which resulted in disability also, this Court is inclined to award Rs.7,500/- more under the head 'pain and suffering'.

11. Learned counsel for the appellant would submit that as per Ext.X2 Disability Certificate, the appellant had suffered 30% permanent disability. But Ext.X1 Disability Certificate dated 22.06.2016 will show that she had suffered only 3% whole body disability. Ext.X2 Disability Certificate was obtained by the appellant without any direction from the Tribunal and even without filing any objection to Ext.X1 Disability Certificate. In paragraph 17 of the impugned award, learned Tribunal has noted that the petitioner, without taking any recourse to set aside Ext.X1 report, approached the Medical Board of Medical College Hospital, Kozhikode, without any sanction or permission from the Tribunal and obtained Ext.X2 Disability Certificate, where disability was noted as 30%. In

Ext.X2 Certificate, it is not mentioned that the Doctor had verified the medical records of the appellant. Only one Doctor has signed in Ext.X2 Certificate, and it is not even mentioned, what was his speciality. It is not mentioned what kind of disability the appellant was suffering, at the time of issuing that Certificate. So the Tribunal rightly rejected Ext.X2 Disability Certificate. Based on Ext.X1 Disability Certificate, her percentage of whole body disability was 3%. We have fixed her notional income @ Rs.9,500/-. So the disability compensation can be assessed as Rs.58,140/- (9,500x12x17x3/100). After deducting Rs.34,560/- already awarded by the Tribunal, she is entitled to get the balance amount of Rs.23,580/-.

12. Towards loss of amenities, learned Tribunal awarded Rs.10,000/-. Ext.X1 Disability Certificate shows that the appellant had suffered multiple tendon injury on her right wrist and even after repair, there was partial ankylosis of right hand. Considering that aspect, this Court is inclined to award Rs.10,000/- more under the head ‘loss of amenities’.

13. The compensation awarded by the Tribunal under all

other heads seems to be reasonable, and hence it needs no modification.

Head of claim	Amount awarded by the Tribunal	Amount awarded in appeal	Difference to be drawn as enhanced compensation
Loss of earning	Rs.18,000/-	Rs.57,000/-	Rs.39,000/-
Extra nourishment	Rs.1,000/-	Rs.2,000/-	Rs.1,000/-
Bystander expenses	…..	Rs.2,000/-	Rs.2,000/-
Pain and suffering	Rs.30,000/-	Rs.37,500/-	Rs.7,500/-
Compensation for permanent disability	Rs.34,560/-	Rs.58,140/-	Rs.23,580/-
Loss of amenities	Rs.10,000/-	Rs.20,000/-	Rs.10,000/-
Total			**Rs.83,080**/-

14. In the result, the appellant is entitled to get enhanced compensation of Rs.83,080/-.

15. The 3rd respondent-Insurer is directed to deposit enhanced compensation of Rs.83,080/- (Rupees Eighty Three Thousand and Eighty only) with 9% interest per annum, from the date of petition till the date of deposit, before the Additional Motor Accidents Claims Tribunal, Thalassery, within a period of two months from the date of receipt of a copy of this

judgment. Learned Tribunal shall disburse that amount to the appellant, after deducting the liabilities, if any, towards tax, balance court fee and legal benefit fund.

The appeal is allowed to the extent as above, and no order is made as to costs.

Sd/-
SOPHY THOMAS
JUDGE

DSV/-