IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

FRIDAY, THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944

MACA NO. 543 OF 2016

AGAINST THE AWARD DATED 15.10.2015 IN OPMV 1279/2013 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOZHIKODE

APPELLANT/1ST RESPONDENT:

MANAGING DIRECTOR, TAMIL NADU STATE TRANSPORT CORPORATION (KUMBAKONAM)LTD, P.B.NO.46, RAILWAY STATION, NEW ROAD, KUMBAKONAM, TAMILNADU.

BY ADVS.
SRI.SUBHASH CYRIAC
SMTSHEEBA JOSEPH

RESPONDENTS/APPLICANT AND 2ND RESPONDENT:

1. **P.V.JEEVESH KUMAR S/O.VELUKUTTY, SHINE NIVAS, MOOSSAIN PARAMBA, MALAPARAMBA PO KOZHIKODE - 673 009.**
2. **K. MANIVEL SO.KANDASWAMI 1/203, VELAKANATHAM, THANDALAI, PUTHUR, MUTTANCHERRY P.O. MUSIRI TALUK, TRICHI, TAMILNADU - 620 015.**

BY ADV SRI.JACOB ABRAHAM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 17.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has been preferred by the 'Tamil Nadu State Road Transport Corporation Ltd.' impugning the Award of the the Motor Accidents Claims Tribunal, Kozhikode ('Tribunal' for short) in OP(MV) No.1279/2013, asserting that the compensation awarded thereunder is excess.

2. Sri.Subhash Cyriac – learned counsel appearing for the appellant, explained that the afore mentioned Original Petition was filed by the 1st respondent - who was grievously injured in a road accident on 05.05.2010, when the Car in which he was travelling along with his friends, collided into the Bus owned by his client. He conceded that the Police investigation has revealed that the driver of the Bus was guilty of rash and negligent driving; but argued that the compensation of Rs.42,64,200/- is excessive. He edificed his case broadly two aspects: namely, that the income adopted by the learned Tribunal in favour of the claimant was wrong; and that the multiplier adopted by it, in computing the compensation for Disability, was higher than what has been permitted by **Sarla Verma v. Delhi Transport Corporation [2010(2) KLT 802].** As a corollary, he submitted that the compensation awarded by the Tribunal under the head

'Transport to hospital', is six times more than what has been asked for, and that too, without any corroborating evidence; and that the compensation awarded under the heads 'Pain and Suffering' and 'Loss of Amenities' is not merely excessive, but without any basis. He thus prayed that this appeal be allowed.

3. Sri.Jacob Abraham – learned counsel for the 1st respondent, on the contrary, argued that the computations adopted by the Tribunal are not merely fair; but, viewed from one angle, the compensation awarded is lesser than what was eligible to his client. He argued that, as has been rightly found by it, his client was a serving 'Sailor' of the Indian Navy, with an income of Rs.16,817/-, as proved through Ext.A6 - Salary Certificate; and that since he was only 27 years of age at the time of accident, 'Future Prospects' at the rate of 50% has been added. He thus prayed that this appeal be dismissed.

4. I have considered the afore rival submissions, on the touchstone of the evidence on record, which have been analyzed very carefully.

5. It is on record and proved in evidence that the appellant was on contractual employment as a 'Sailor' and

Ext.A6, issued by the Indian Navy, establishes his monthly income to be Rs.16,817/-, at the time of the accident. The learned Tribunal has correctly reckoned this. As per **National Insurance Company Ltd. v. Pranay Sethi [2017(4) KLT 6621],** the "Future Prospects" to be added, in the case of a person who is not on permanent employment, is 40%; and hence the percentile of 50% taken by the learned Tribunal will have to be corrected. As far as the multiplier is concerned, it is common ground for both sides that the contractual employment of the 1st respondent would end when he attains the age of 39 years. Taking the said age into account, the multiplier to be adopted by the Tribunal ought to have been '15' and not '17', as has been now done.

6. On the question of the compensation awarded under the heads 'Pain and Suffering and 'Loss of Amenities', the medical evidence, particularly Ext.A2 – Wound Certificate, read along with Exts. A7 – A16 and A19 – A21 treatment records, establish that the appellant suffered the following injuries:

> *"Abrasion on interior aspect of the neck*
>
> *Multiple abrasion over ® forearm and hand*
>
> *Abrasion with deforming ® thigh*

Inability to use the both lower limb

Pain over lumbar spine"

It is also not contested that the 1st respondent had to be hospitalized for 458 days, thus manifestly establishing the horrendous aftermath of the injuries on him. Since the injuries can never seen to be trivial and taking note of the extremely long hospitalization which he had to endure, I have no doubt that the compensation awarded by the Tribunal under the afore two heads is wholly just and fair. I do not propose to modify in any manner whatsoever.

7. The only other issue impelled before me is as regards the compensation awarded by the Tribunal towards 'Transport to Hospital'. Sri.Subhash Cyriac argues that, against the claim of Rs.5,000/-, Rs.30,000/- has been awarded and that this is without any basis. I find some force in this, particularly because the evidence does not, in any manner, corroborate the amount awarded. I, therefore, propose to revise it to be Rs.5,000/-, as claimed.

In the afore circumstances, I allow this appeal in part, in the following manner:

a. The compensation towards 'Permanent Disability' is reduced to Rs.25,35,163/-, reckoning the income of the

appellant to be Rs.16,817/-, with 40% Future Prospects added to it and adopting the multiplier of '15', as per **Sarla Verma v. Delhi Transport Corporation [2010 (2) KLT 802].**

b. The compensation under the head 'Transport to Hospital' is reduced to Rs.5000/- from Rs.30,000/-.

c. In all other heads, the compensation awarded by the Tribunal remains unaltered.

Consequently, the appellant will be at full liberty to recover the compensation, as enhanced by this Court, from the Insurance Company, along with interest at the rate of 8.5% (reducing the rate of interest of 9%, as awarded by the Tribunal in view of the escalation granted by this Court) from the date of claim, until it is recovered. He will also be entitled to proportionate costs on the enhanced amount as ordered by the Tribunal before it.

In view of the afore, the amount as fixed above shall be deposited by the Insurance Company before the learned Tribunal, within a period of two months from the date of receipt of a copy of this judgment.

Sd/- DEVAN RAMACHANDRAN,
JUDGE

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