

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

&

THE HONOURABLE MR. JUSTICE P.Q.BARKATH ALI

THURSDAY, THE 30TH SEPTEMBER 2010 / 8TH ASWINA 1932

MACA.No. 1429 of 2004()

OPMV.939/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM

APPELLANT(S): APPELLANT/APPLICANT.

DILIP RADHAKRISHNAN @ DILIP,  
S/O. RADHAKRISHNAN, RESIDING AT DEEPAM,  
ST.GEORGE LANE, KUMARAPURAM, THIRUVANANTHAPURAM.

BY ADV. SRI.T.M.CHANDRAN

RESPONDENT(S): RESPONDENTS.

1. B.SULFIKAR, T.C.35/833,  
CHEELANTHIMUKKU, VALLAKKADAVU P.O.,  
THIRUVANANTHAPURAM
2. RAJAN, S/O. JANARDHANAN,  
T.C.42/1157, NEAR PONNARA SCHOOL,  
PONNARA NAGAR, KAMALESWARAN WARD,  
THIRUVANANTHAPURAM.
3. THE NEW INDIA ASSURANCE COMPANY LTD.,  
THIRUVANANTHAPURAM BRANCH, K.N.MATHEW BUILDING,  
GANDHARI AMMAN COIL ROAD, THIRUVANANTHAPURAM,  
REPRESENTED BY ITS BRANCH MANAGER.
4. N.S.BABU, S/O. SREENIVASA NAIDU,  
NO.4/30, BAKTHAVALSALAM STREET, MADRAS - 26.
5. BIBI, S/O. K.N.CHACKO,  
T.C.3/510, SREEDEVI HOUSING COLONY,  
KAITHAMUKKU, THIRUVANANTHAPURAM.
6. UNITED INDIA INSURANCE COMPANY,  
PARK TOWN BRANCH OFFICE, 70, N.S.C.BOSE ROAD,  
III FLOOR, D-1080, MADRAS - 600 079,  
REPRESENTED BY BRANCH MANAGER.

ADV. SRI.KKM.SHERIF FOR R3  
SRI.A.A.ZIYAD RAHMAN FOR R3  
SRI.C.V.BIMAL ROY FOR R6

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION  
ON 30/09/2010, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**A.K.BASHEER & P.Q.BARKATH ALI, JJ.**

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**M.A.C.A.No.1429 OF 2004**

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Dated this the 30<sup>th</sup> day of September, 2010

**JUDGMENT**

Barkath Ali, J.

Appellant is the claimant in O.P.(MV)No.939/1996 on the file of Motor Accidents Claims Tribunal, Thiruvananthapuram. He sustained the following injuries in a motor accident that occurred on August 16, 1995 at about 10.30 p.m.

Compound fracture of left femur, lacerated wound over the lower jaw, head injury and abrasions over the left palm. There was profus bleeding from his ears and nostrils.

2. The accident happened while the claimant was travelling in a car bearing Reg.No.TSH 9696 along Kowdiar-Vellayambalam road and when he reached near Raj Bhavan, a mini lorry bearing Reg.No.KEV 5139 driven by the second respondent dashed against the car. Alleging negligence against the second respondent, the claimant filed the O.P. before the Tribunal under Section 166 of Motor Vehicles Act claiming a compensation of Rs. 3,00,000/-.

3. Respondents 1, 2, 3 are the owner, driver and insurer of the

offending mini lorry. Respondents 4, 5, and 6 are the owner, driver and insurer of the car involved in the accident. Respondents 1,2, 4 and 5 remained absent before the Tribunal. Respondents 3 and 6, the insurers of the vehicles involved in the accident filed written statements admitting the policy, but attributed negligence to the drivers of the other vehicle.

4. This O.P. was jointly tried along with other O.Ps. filed by the other injured persons and a common award was passed by the Tribunal. Pws 1 to 3 were examined and Exts.A1 to A33 were marked on the side of the claimants before the Tribunal. The Tribunal on an appreciation of evidence found that the accident occurred due to the rash and negligent driving of the offending mini lorry by second respondent and awarded a compensation of Rs. 1,81,000/- with interest @ 9% per annum from the date of petition till realisation. The claimant has now come up in appeal challenging the quantum of compensation awarded by the Tribunal.

5. Heard the counsel for the appellant/claimant and the counsel for the Insurance Company.

6. The accident is not disputed. The finding of the Tribunal

that the accident occurred due to the negligence on the part of the second respondent is not challenged in this appeal. Therefore, the only question which arises for consideration is whether the claimant is entitled to any enhanced compensation.

7. The break up of the compensation awarded is as under :

Loss of earning	- Rs. 15,000/-
Medical and incidental exp.	- Rs. 80,000/-
Transportation	- Rs. 2,000/-
Damage to clothing	- Rs. 500/-
Bystander expenses	- Rs. 2,500/-
Pain and suffering	- Rs.15,000/-
Disability	- Rs.51,000/-
Loss of amenities	- Rs.15,000/-

8. Counsel for the claimant sought enhancement of compensation for the disability caused, loss of amenities and enjoyment in life and for pain and suffering endured.

9. The Tribunal took the monthly income of the claimant as Rs.2,500/-, took the percentage of disability as 10% and adopted a multiplier of 17 as he was aged 27 at the time of the accident and awarded Rs. 51,000/- for the disability caused. The claimant as PW3 testified that he is working as Senior Marketing Executive with Air Travels India (P) Ltd. and used to earn Rs. 28,704/- per month. Ext.A16 is certificate showing his employment. Taking into

consideration these aspects, we feel that his monthly income can be reasonably fixed at Rs.3,000/-. As regards the percentage of disability, in Ext.A22 disability certificate, it is certified that he has suffered a permanent disability of 20%. Therefore, we feel that the percentage of disability can be reasonably fixed at 15%. The multiplier adopted by the Tribunal as 17 is not seriously challenged. Thus calculated for the disability caused, the claimant is entitled to a compensation of Rs. 91,800/- ( 15% x 3000 x 12 x 17). Thus on this count, the claimant is entitled to an additional compensation of Rs.40,800/-.

10. The Tribunal awarded Rs. 15,000/- for pain and suffering endured. Taking into consideration the nature of the injury sustained by the claimant, we feel that a compensation of Rs. 20,000/- would be reasonable on this count.

11. The Tribunal awarded Rs.15,000/- for loss of amenities and enjoyment in life. Having regard to the nature of the injuries sustained by the claimant, we feel that a compensation of Rs. 25,000/- would be reasonable on this count.

12. There is another aspect in this case. The Tribunal awarded Rs. 15,000/- towards loss of income for 6 months @ Rs. 2,500/- per

month. As we have fixed the monthly income of the deceased as Rs. 3,000/-, he is entitled to a compensation of Rs. 18,000/- towards loss of income. Thus on this count, the claimant is entitled to an additional compensation of Rs. 3,000/-. As regards the compensation awarded under other heads, we find the same to be reasonable and therefore are not disturbing the same.

13. In the result, the claimant is found entitled to an additional compensation of Rs. 58,800/-. He is entitled to interest @ 9% per annum from the date of petition till realisation and proportionate cost. The third respondent being the insurer of the offending vehicle shall deposit the amount before the Tribunal within two months from the date of receipt of a copy of this judgment. The award of the Tribunal is modified to the above extent.

The Appeal is disposed of as found above.

**A.K.BASHEER, JUDGE**

**P.Q.BARKATH ALI, JUDGE**



