

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER
&
THE HONOURABLE MR. JUSTICE P.Q.BARKATH ALI

TUESDAY, THE 31ST AUGUST 2010 / 9TH BHADRA 1932

MACA.No. 1603 of 2010

OPMV.2056/2005 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR

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APPELLANT / CLAIMANT:

SIRAJ M.P., S/O.ABOOBACKER,
EDAYATH HOUSE, VENGOLA, PERUMBAVOOR.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENT(S):

1. THE MANAGING DIRECTOR,
HEERA CONSTRUCTIONS (P) LTD.,
HEERA PARK, M.P.APPAN ROAD,
VAZHUTHACADU, THIRUVANANTHAPURAM,
PIN-695 004.
2. THE ORIENTAL INSURANCE CO. LTD.,
RAMAKRISHNA BUILDING, ARISTO JUNCTION,
THIRUVANANTHAPURAM-695001.
3. AJI P., SON OF PONNUSWAMY NAIDU,
THOPPIL HOUSE, NEAR THADATHUMAL L.P. SCHOOL,
THADATHUMALA P.O., PAZHAYAKUNNU,
CHIRAYINKEEZHU TALUK, THIRUVANANTHAPURAM DISTRICT,
PIN-695 304.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 31/08/2010, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

M.A.C.A.No.1603 OF 2010

Dated this the 31st day of August 2010

JUDGMENT

Basheer, J.

Appellant sustained the following two injuries in a road traffic accident:

- (a) Fracture Femur (Right)
- (b) Fracture both bones (Right) Leg.

2. He claimed a sum of Rs.2,00,000/- towards compensation for the above injuries from the owner, driver and insurer of the offending vehicle before the Motor Accident Claims Tribunal under Section 166 of the Motor Vehicles Act. The Tribunal, after considering the oral and documentary evidence adduced by the appellant, awarded a sum of Rs.1,10,462/- with 8% interest from the date of petition till the date of realisation. The above award is impugned in this appeal contending that the amount awarded by the Tribunal is inadequate and meager.

3. It is primarily contended by learned counsel for the appellant that the Tribunal committed serious error and illegality in refusing to accept the percentage of disability of 13% as certified by PW1 in Ext.A8, disability certificate. It is true that the Tribunal has, after

considering Ext.A6 discharge summary, A7 treatment certificate and A8 disability certificate, reckoned the whole body disability of the appellant as 8% and awarded a sum of Rs.43,200/- under the head of permanent disability, as against a claim of Rs.55,000 made by the appellant.

4. We have carefully perused the disability certificate a copy of which is made available before us for perusal. While considering the nature of the injuries and partial ankylosis, the doctor has specifically indicated the whole body disability of the appellant as 5% whereas for the specific part of the body, he has assessed a higher percentage of disability. For instance, for partial ankylosis the doctor certified 7% disability, while he has stated that for the whole body it may be only 3%. The tribunal, therefore, was justified, in our view, in accepting 8% as the whole body disability as against 13% certified by the doctor.

5. As has been mentioned earlier, the appellant had claimed a total sum of Rs.55,000/- under the head of permanent disability. The Tribunal has awarded Rs.43,200/- under the said head. Apart from the above, the Tribunal has also awarded medical expenses to the tune of Rs.32,512/- based on the bills produced by the appellant. For pain and suffering, the appellant has been awarded Rs.16,000 and for

loss of amenities 6,000/- in addition to Rs.7,500/- awarded towards loss of earning for three months. Even though the appellant had claimed that he was working as a Sales Executive in a company, he had not produced any satisfactory material to substantiate the above contention.

6. Having carefully perused the entire materials available on record, we do not find any reason to interfere with the award passed by the Tribunal. In our view, the appellant has been awarded just and reasonable compensation in the facts and circumstances of the case.

Therefore, the appeal fails and it is accordingly dismissed.

A.K.BASHEER, JUDGE

P.Q.BARKATH ALI, JUDGE

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