

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE  
&  
THE HON'BLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 29TH DAY OF FEBRUARY 2012/10TH PHALGUNA 1933

MACA.No. 255 of 2012

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OPMV.1984/2007 of M.A.C.T.,KOZHIKODE  
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APPELLANT(S)/PETITIONER:

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SANEESH  
S/O.SURENDRAN, AGED 25 YEARS, KULANGARAKANDI HOUSE  
CIVIL STATION P.O., ERANJIPALAM, KOZHIKODE.

BY ADVS.SRI.V.S.CHANDRASEKHARAN  
SMT.LEKSHMI SWAMINATHAN

RESPONDENT(S)/RESPONDENTS:

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1. EKIRIYAS  
AGE NOT KNOWN, S/O.ALI PT, PAZHAYAPALLITHAZHAM HOUSE  
SILK STREET BEACH ROAD, POST KOZHIKODE.-673009
  2. MUHAMMED BASHEER K.  
AGED 37 YEARS, S/O.UMMERKOYA, 20/341  
MANKUZHI KALLAI POST, KOZHIKODE.-673008
  3. THE ORIENTAL INSURANCE CO.LTD.  
DIVISIONAL OFFICE, SEEMA BUILDINGS, GH ROAD  
KOZHIKODE.-673002

R3 BY SRI.M.JACOB MURICKAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION  
ON 29-02-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE &  
A. V. RAMAKRISHNA PILLAI, JJ.

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M. A. C. A No.255 of 2012  
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Dated this the 29<sup>th</sup> day of February, 2012

### **JUDGMENT**

*Ramakrishna Pillai, J*

The claimant is in appeal.

2. The appellant approached the Tribunal claiming a compensation of ₹ 2 lakhs on account of the injuries sustained by him in a road traffic accident occurred on 28/07/06.

3. Allegedly while the appellant was riding his motorcycle he was hit down by another motorcycle which was coming from the opposite direction. Against the claim the learned Tribunal awarded a sum of ₹ 1,53,765/- as compensation under various heads. The adequacy of the compensation is under challenge in this appeal.

4. We have heard the learned counsel for the appellant and the learned counsel for the 3<sup>rd</sup> respondent Insurance

Company. We have gone through the impugned award.

5. Medical records reveal that the appellant sustained fractures to his frontal bone, maxilla and right femur. He was inpatient for about 11 days. Towards compensation for pain and suffering the learned Tribunal has awarded a sum of ₹ 10,000/-, which according to the learned counsel for the appellant is low. As the appellant had sustained a fracture to the major bone of his right leg, we are of the view that some more amount could have been awarded as compensation for pain and suffering. Thus we award an additional sum of ₹ 5,000/- on that count.

6. It was pointed out by the learned counsel for the appellant that in spite of the grievous nature of the injuries sustained by the appellant, no amount was awarded by the learned Tribunal towards loss of amenities for the period during which the appellant had undergone treatment. We are of the definite view that because of the injuries sustained by the appellant he might not have been able to move out at least for a period of four months. Hence,

towards loss of amenities for the period during which he was compelled to take rest, we award a sum of ₹ 10,000/-.

7. According to the learned counsel for the appellant, the appellant was a Computer Programmer earning a monthly income of ₹ 8,000/-. The learned counsel for the 3<sup>rd</sup> respondent per contra would submit that there is no evidence to prove either the income or the qualification of the appellant. We notice that the accident was of the year 2006. Hence, we are of the definite view that the notional income of ₹ 2,500/- fixed by the learned Tribunal is quite reasonable as it is only reasonable to presume that he might have earned at least ₹ 2,500/- per month by engaging himself in any job. As we have already found that the petitioner might not have been able to go for work at least for a period of four months, he is entitled to get compensation towards loss of earnings for four months. Thus, the appellant is entitled to get an additional sum of ₹ 5,000/- towards loss of earnings.

8. The learned Tribunal has awarded bystander's

expenses at the rate of ₹ 100/- per day for 11 days of hospitalisation. As the accident was of the year 2006, we are of the view that bystander's expenses at the rate of ₹ 200/- per day could have been awarded. Thus the appellant is entitled to receive an additional sum of ₹ 1100/- as compensation for bystander's expenses and we award the said amount to the appellant.

9. Towards expenses for transportation to hospital a sum of ₹ 1,000/- was awarded. We are of the view that an additional sum of ₹ 1,000/- can be awarded to the appellant as transportation expenses.

10. The learned Tribunal has awarded a sum of ₹ 81,000/- as compensation for permanent disability adopting the correct multiplier and adopting the percentage of disability made mention of in Ext.C1 Disability Certificate. We see no reason to disturb the said finding.

11. Thus, in total the appellant is entitled to receive a sum of ₹ 22,100/- over and above what was awarded by the learned Tribunal. The amount awarded as above will carry

interest at the rate of 7% per annum from the date of claim petition till realisation.

12. The appeal is allowed. The impugned award shall stand modified as above.

Sd/-  
PIUS C. KURIAKOSE  
JUDGE

Sd/-  
A. V. RAMAKRISHNA PILLAI  
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE