

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH

WEDNESDAY, THE 31ST DAY OF JULY 2013/9TH SRAVANA, 1935

MACA.No. 1420 of 2012 ()

THE AWARD IN OPMV 2404/2003 of MACT,EKM DATED 30-06-2011

APPELLANT/PETITIONER:

SHAJI
AGED 44 YEARS, S/o.AUGUSTINE
THANDASSARY HOUSE, SOUTH CHITTOR
CHERANALLOOR, KOCHI-682 027

BY ADVS.SRI.JOJO GEORGE
SMT.T.A.LUXY
SRI.P.MURALEEDHARAN (THURAVOOR)

RESPONDENT (S) :

1. HARSHAN
S/o.RAGHAVAN, MALLYILL HOUSE
SANTACRUZ, PALLUTUTHY VILLAGE
PERUMPADAPU, PIN-682006 (DRIVER)
2. JYOTHI BABU
S/o.BALAKRISHNAN, MALLAYIL HOUSE.
15/96(A), KARIVELIPADY, KOCHI-682005
(REGISTERED OWNER)
3. UNITED INDIA INSURANCE CO.LTD, BRANCH OFFICE
BANK OF BARODA BUILDING
PALACE ROAD, MATTANCHERRY, PIN-682002
(INSURER)

R3 BY ADV. SRI.PMM.NAJEEB KHAN
R2 BY ADV. SRI.P.B.ASOKAN
R3 BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
31-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOMAS P.JOSEPH, J.

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M.A.C.A.No.1420 of 2012

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Dated this the 31st day of July, 2013

J U D G M E N T

This appeal arises from the award dated 30.06.2011 in O.P (M.V).No.2404 of 2003 of the Motor Accident Claims Tribunal, Ernakulam (for short, "the Tribunal").

2. The appellant while riding on the pillion of a motor cycle on 07.05.2000 suffered injuries due to an autorikshaw driven by the first respondent, belonging to the second respondent and insured with the third respondent hitting the motor cycle. The appellant claimed compensation from the respondents alleging that the accident occurred due to the negligence of the first respondent.

3. Respondents 1 and 3, driver and insurer of the offending vehicle remained absent in the Tribunal. The second respondent alone contested.

4. The Tribunal found that accident occurred due to the negligence of the first respondent, assessed compensation payable to the appellant at ₹12,489/- found that since Ext.A9, policy of insurance is only an Act only policy, the third respondent is not liable and fastened liability on respondents 1 and 2. The appellant is aggrieved by the quantum of compensation awarded and

exoneration of the third respondent from liability.

5. Learned counsel for the appellant has contended that compensation awarded is low. It is submitted that Ext.A7, certificate of salary which was not challenged in cross examination was rejected for no reason.

6. It is stated that the appellant, aged 34 years at the relevant time is a fitter of rolling shutters and earning ₹3,120/- per month. The Tribunal has fixed monthly income of the appellant at ₹3,000/-. Since Ext.A7 is not under challenge and the difference is only ₹120/- per month, I find no reason to reject Ext.A7. Hence monthly income of the appellant at the relevant time is fixed at ₹3,120/-.

7. Exts.A3, A4 and A6 are the documents produced to prove injuries suffered by the appellant. It is seen that he had a crush injury on the left foot which was sutured. He had other injuries including tenderness over the 4th and 5th metatarsal as well.

8. The Tribunal has, based on monthly income of the appellant at ₹3,000/- awarded loss of earnings for one month. Learned counsel submits that even after discharge from the hospital the appellant had to continue treatment. Having regard to the nature and site of injuries suffered it is possible that the appellant was not able to work for three months. In fact the

Tribunal also found that loss of earnings is payable for three months but awarded only for one month only. For three months loss of earnings comes to ₹9,360/-. Less ₹3,000/- already awarded, additional compensation payable on that count comes to ₹6,360/-.

9. For transportation charges only ₹500/- is awarded. Medical expenses awarded as per the bills is only ₹739/-. Having regard to the nature of injuries the appellant suffered and period of treatment, it is likely that the appellant had to visit the hospital many times and spent for treatment. Hence ₹1500/- is allowed on that count.

10. Compensation awarded for pain and suffering is only ₹4,000/- which appears to be on the lower side. Having regard to the site and nature of the injuries and the pain and suffering undergone a further sum of ₹3,000/- is allowed on that count.

11. Compensation awarded for loss of amenities of life is only ₹3,000/- which also requires modification. In the light of the circumstances above stated, a further sum of ₹2,000/- is payable on that count. Thus additional compensation payable to the appellant comes to ₹12,860/- with interest @9% per annum from the date of application till realisation.

12. The Tribunal has exonerated the third respondent on the premise that Ext.A9, policy of insurance is an Act only policy

and the appellant was a pillion rider. The Tribunal failed to note that the claim was against the owner, driver and insurer of the autorikshaw and that Ext.A9, policy related to that autorikshaw. Therefore, that the appellant was riding on the pillion of the motor cycle is of no consequence so far as liability of the third respondent is concerned. In view of Ext.A9, the third respondent is liable to indemnify the second respondent who is the owner of the autorikshaw.

Resultantly this appeal is allowed in part as under:

(i) In modification of the award dated 30.06.2011 in O.P(M.V).No.2404 of 2003 of the Motor Accident Claims Tribunal, Ernakulam the appellant is allowed to recover a further sum of ₹12,860/- (Rupees Twelve Thousand Eight Hundred and Sixty Only) with interest @9% per annum from the date of application till recovery from the respondents.

(ii) The third respondent being the insurer of the autorikshaw is found liable to deposit the compensation awarded by the Tribunal as well as the additional compensation this Court has awarded.

(iii) The third respondent is directed to deposit the amount in the Tribunal within two (2) months from this day.

(iv) Direction regarding withdrawal/deposit of the amount shall be

issued by the Tribunal.

(iii) Parties are directed to suffer
their cost in the appeal.

Sd/-
THOMAS P.JOSEPH, JUDGE

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P.A to Judge