

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR  
&  
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 30TH DAY OF SEPTEMBER 2016/8TH ASWINA, 1938

MACA.No. 2007 of 2016 ()

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AGAINST THE AWARD IN OPMV 217/2008 of M.A.C.T., THALASSERY  
DATED 23-10-2014

APPELLANT(S)/PETITIONER:

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NAZAR P.P,  
AGED 46 YEARS, S/O ABDUL RAHIMAN, ANWAR MAHAL,  
PERUMBA P.O, PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/RESPONDENT NO. 3:

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UNITED INDIA INSURANCE CO.LTD,  
SOUTH BAZAR, PAYYANUR P.O, PIN 670 307.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL  
BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON  
30-09-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.T. RAVIKUMAR  
&  
K.P.JYOTHINDRANATH, JJ.**

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**M.A.C.A. No.2007 OF 2016**

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Dated this the 30<sup>th</sup> day of September, 2016

**JUDGMENT**

*Ravikumar, J.*

This appeal is filed by the injured-petitioner seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Thalassery in O.P.(MV).No.217 of 2008. On 15.9.2007, he met with a motor vehicle accident and going by Ext.A2 wound certificate, he sustained fracture on left tibial plateau. Immediately after the accident, he was taken to Tejasvini Hospital, Mangalore and he remained there as inpatient for a period of 21 days. Ext.A3 is the discharge card. It is in the said circumstances that the claim petition was filed under section 166 of the Motor Vehicles Act seeking a total compensation of ₹3,50,000/-.

2.To establish his claim, the appellant adduced documentary evidence consisting of Exts.A1 to A9. However, no oral evidence was adduced by both sides before the Tribunal. On the side of the respondents, no documentary evidence was also adduced. The Tribunal, as per the impugned award, granted a total compensation of ₹1,51,800/- with interest @ 8% per annum from the date of the petition till realisation. The appellant seeks for enhancement of the said quantum of compensation.

3.We have have heard Sri.M.V.Amaresan, the learned counsel for the appellant and Sri.Thomas Mathew Nellimoottil, the learned counsel appearing for the respondent-insurance company. It is submitted by both sides that the only question to be decided in this appeal is whether the appellant is entitled to get enhancement of compensation under any head.

4.The learned counsel appearing for the appellant contended that

the Tribunal took the monthly income notionally at ₹4,000/- ignoring the averments in the claim petition that the appellant was doing business and was earning a monthly income of ₹10,000/-. The appellant was aged only 38 years at the time of the accident. Ext.A8 was produced before the Tribunal to support his contention that he was doing business and was earning a monthly income of ₹10,000/-. Upon hearing the learned counsel on both sides and perusing the impugned award and also taking note of the fact that the appellant had not adduced any evidence before the Tribunal to establish that the injuries sustained by him in the accident resulted in permanent disability, we are of the view that this appeal can be disposed of, at the admission stage itself.

5.Despite the persuasive arguments of the learned counsel that the Tribunal went wrong in not granting compensation under the head permanent disability, we are of the view that the Tribunal cannot be found fault with, on that score. The appellant had not produced any

evidence before the Tribunal to establish that the injuries sustained by him in the accident resulted in permanent disability. When that be the case, it cannot be said that the Tribunal has committed any error in not granting compensation for permanent disability. But at the same time, we are of the view that there is force in the contention that the monthly income fixed by the Tribunal is on the lower side. The claim of the appellant was that he was conducting business and was earning ₹10,000/- per month. But at the same time, there is nothing in Ext.A8 which would reveal the monthly income of the appellant. It would only suggest that he was a business man. Taking note of the fact that even in the case of a coolie who met with an accident in the year 2004, the Hon'ble Apex Court fixed the monthly income of ₹4,500/- [Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236], we are of the view that there is force in the contention of the appellant that the Tribunal took the monthly income meagrely. But in the absence of any evidence regarding the income, it can only be said that the Tribunal

has rightly fixed the monthly income notionally for calculation purpose. Taking into account the fact that the appellant was aged only 38 years and the accident occurred in the year 2007 and also in the light of the fact discernible from Ext.A8 that he was doing business, we are of the view that it is only just and proper to fix the monthly income of ₹7,000/- for calculation purpose. It is fixed accordingly. The Tribunal took two months' period of loss of earning. Taking note of the nature of the injuries sustained by the appellant as evidenced from Exts.A2 and A3, the period ought to have been taken as three months. Upon taking the period of loss of earning as three months and taking the monthly income as ₹7,000/- the appellant would be entitled to get an amount of ₹13,000/- additionally towards loss of income. It is granted. The nature of the injuries would undoubtedly reveal that the dresses worn by him at the time of the accident must have been damaged. In such circumstances, we are inclined to grant ₹500/- more under that head. Admittedly, the appellant had been an inpatient for a period of 21 days. In such circumstances, taking note

of the year of the accident, we are of the view that the rate of expense towards extra nourishment ought to have been ₹100/- per day. In that view of the matter and taking the period as 21 days, the appellant would be entitled to get ₹1,100/- more. Despite the persuasive arguments of the learned counsel for the appellant, we find no reason to hold that the appellant is entitled to enhancement of compensation under any other heads. In the light of the discussions as above, the appellant will be entitled to get an additional compensation of ₹14,600/-. It is awarded. The additional compensation will carry 8% interest from the date of the petition till realisation. The respondent is directed to deposit the said amount within one month from the date of receipt of a copy of this judgment. There will be no order as to costs.

**Sd/-**

**C.T. RAVIKUMAR  
(JUDGE)**

**Sd/-**

**K.P.JYOTHINDRANATH  
(JUDGE)**

**spc/**





**C.T. RAVIKUMAR, J.**

**JUDGMENT**

**September, 2010**

