

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR  
&  
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 30TH DAY OF JUNE 2017/9TH ASHADHA, 1939

MACA.No. 271 of 2012  
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AGAINST THE AWARD IN O.P.(MV)NO.3308/2002 of MOTOR ACCIDENTS CLAIMS  
TRIBUNAL, THRISSUR, DATED 15-10-2011

APPELLANT(S)/PETITIONER:  
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MOHANAN.G.,  
S/O.GOPALAN, CHATTIYODE HOUSE,  
P.O.POTHUNDY, VIA.NENMARA,  
PALAKKAD DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT(S)/RESPONDENTS:  
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1. P.J.PAULY,  
S/O.JOSEPH, PUNNELIPARAMBIL HOUSE, P.O.THAZHEKKAD,  
THRISSUR DISTRICT-680001.
2. S.NIJAN,  
S/O.SAITHU MOHAMMED, GDS, KOTTAMANGALAM,  
NALLEPPILLY-680001.
3. NATIONAL INSURANCE CO.LTD.,  
REP. BY THE DIVISIONAL MANAGER,  
NATIONAL INSURANCE CO.LTD.,  
DIVISIONAL OFFICE,  
THRISSUR - 680001

R3 BY ADV.SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON  
30-06-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Bb

**C.T.RAVIKUMAR  
&  
ANIL K.NARENDRA, JJ.**

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**M.A.C.A.No.271 of 2012**

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**Dated this, the 30<sup>th</sup> day of June, 2017.**

**J U D G M E N T**

ANIL K.NARENDRA, J.

This appeal arises out of the award passed by the Motor Accidents Claims Tribunal, dated 15.10.2011 in O.P. (M.V)No.3308/2002, a claim petition filed by the appellant/claimant under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the injury sustained in a motor accident which occurred on 25.10.2001, while he was travelling as a pillion rider in a Moped bearing registration No.TN-37/H-3544. At the place of accident, the Moped was hit by a tempo van bearing registration No.KL-08/K-9158 owned and driven by respondents 1 and 2 and insured with the 3<sup>rd</sup> respondent. Claiming compensation on account of the injury sustained in the accident, the appellant/claimant filed claim petition before the Tribunal, contending that

the accident occurred due to the rash and negligent driving of the tempo van by the 2<sup>nd</sup> respondent driver. He claimed a total compensation of Rs.5,34,000/- under different heads.

2. Before the Tribunal, Exts.A1 to A11 were marked on the side of the appellant/claimant. On the side of the respondents, a copy of the policy certificate was marked as Ext.B1. The Patient Record File was marked as Ext.X1. The appellant himself was examined as PW1. Respondents have not chosen to adduce any oral evidence.

3. After considering the materials and evidence on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of tempo van by the 2<sup>nd</sup> respondent driver. Since the said vehicle was covered by a valid insurance policy, the 3<sup>rd</sup> respondent insurer was held liable to indemnify the 1<sup>st</sup> respondent owner. Under different heads, the Tribunal awarded a total compensation of Rs.2,96,300/- together with interest at the rate of 7.5% per annum from the date

of petition till realisation and proportionate cost. The 3<sup>rd</sup> respondent insurer was directed to deposit the said amount before the Tribunal.

4. Dissatisfied with the quantum of compensation awarded by the Tribunal under different heads, the appellant/claimant is before this Court in this appeal.

5. We heard the arguments of learned counsel for the appellant/claimant and learned counsel for the 3<sup>rd</sup> respondent insurer.

6. The sole issue that arises for consideration in this appeal is as to whether the appellant/claimant is entitled for enhancement of the compensation already awarded by the Tribunal under different heads.

7. The accident is of the year 2001 and at the time of accident, the appellant was aged 27 years. He claimed a monthly income of Rs.6,000/- as a welding supervisor. In order to substantiate the said claim, he produced Ext.A10 certificate issued by one 'Santhosh Engineering Works' at Coimbatore, in which it is certified that he was drawing a consolidated salary of Rs.4,670/- at the time

of accident. However, the appellant has not taken any steps to prove Ext.A10 certificate in accordance with law. In the absence of any reliable materials, the Tribunal reckoned the monthly income of the appellant notionally at Rs.3,000/- for the purpose of assessing compensation under different heads. Considering the fact that the accident is of the year 2001 and at the time of accident the appellant was aged 27 years, we deem it appropriate to re-fix his monthly income notionally at Rs.4,000/- for the purpose of assessing compensation under different heads.

8. Reckoning notional monthly income of the appellant at Rs.3,000/-, applying the multiplier of 17 and percentage of disability as 15%, the Tribunal awarded a sum of Rs.91,800/- towards the 'disability'. Ext.A4 is the disability certificate issued by one Orthopedics Surgeon, in which the percentage of disability has been certified as 28%. However, the said disability certificate was not proved by examining the Doctor who assessed the permanent disability of the appellant. In such

circumstances, considering the nature of injuries sustained by the appellant, the Tribunal scaled down the percentage of permanent disability as 15% for assessing compensation under the head 'disability'. The assessment so made by the Tribunal cannot be said to be either arbitrary or perverse, warranting an interference in this appeal. Since we have already re-fixed the monthly income of the appellant notionally at Rs.4,000/-, the disability compensation payable is re-worked as Rs.1,22,400/- ( $4000 \times 12 \times 17 \times 15 / 100$ ). Since the Tribunal has already awarded a sum of Rs.91,800/- under this head, the additional compensation payable comes to **Rs.30,600/-**.

9. Towards 'loss of earning', the Tribunal awarded a sum of Rs.36,000/- at the rate of Rs.3,000/- for a period of 12 months. Since we have already re-fixed the monthly income of the appellant notionally at Rs.4,000/-, the compensation payable under this head comes to Rs.48,000/-. After deducting Rs.36,000/- already awarded, the additional compensation comes to

**Rs.12,000/-.**

10. Towards 'damages to clothing', the Tribunal awarded a sum of Rs.500/-. Considering the fact that the accident is of the year 2001, we deem it appropriate to re-fix the compensation under this head as Rs.750/-, resulting an additional compensation of **Rs.250/-**.

11. Towards 'bystander expenses', the Tribunal awarded a sum of Rs.15,000/- and a further sum of Rs.2,500/- was awarded towards 'extra nourishment'. The documents on record would show that the appellant had undergone inpatient treatment for a period of 66 days. Considering the fact that the accident is of the year 2001, the appellant is entitled to get 'bystander expenses' at the rate of Rs.150/- per day and 'extra nourishment' at the rate of Rs.100/- per day. If that be so, the compensation payable under the head 'extra nourishment' will have to be re-worked as Rs.6,600/- (66x100), resulting an additional compensation of Rs.4,100/- (6600-2500). However, after re-assessing the compensation under the head 'bystander expenses' at the rate of

Rs.150/- for 66 days, the compensation under the said head will come to only Rs.9,900/-. Since the Tribunal has already awarded a sum of Rs.15,000/- under this head, there is an excess payment of Rs.5,100/-. In such circumstances, we hold that the appellant is not entitled for payment of any further amount under the head 'extra nourishment'.

12. Towards 'pain and suffering' and 'loss of amenities', the Tribunal has already awarded Rs.30,000/- each. Considering the nature of injuries sustained, the treatment undergone and the disability that had arisen therefrom, we find that the compensation awarded by the Tribunal under the above heads represent just and reasonable compensation which warrants no interference in this appeal.

In the result, the appellant is entitled for an additional compensation of **Rs.42,850/-** (30,600+12,000+250) in this appeal which will carry interest at the rate of 8% per annum from the date of petition till realisation. Since the insurance coverage of



the vehicle not in dispute, the 3<sup>rd</sup> respondent insurer shall deposit the aforesaid amount before the Tribunal within a period of 2 months from the date of receipt of a certified copy of this judgment.

Appeal is disposed of as above. There will be no order as to costs.

Sd/-

**C.T.RAVIKUMAR,  
JUDGE.**

Sd/-

**ANIL K.NARENDRA,  
JUDGE.**

Bb/03/07/2017

*[True copy]*

*P.A to Judge*