

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY ,THE 31ST DAY OF AUGUST 2018 / 9TH BHADRA, 1940

MACA.NO. 2503 OF 2009

AGAINST THE AWARD IN O.P.(M.V.) NO.3432/2001 OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, ERNAKULAM DATED 31-12-2007

APPELLANT/PETITIONER :

SHIBU, S/O VISWANATHAN,
ERUPAKALAPARAMBU HOUSE,
ELLIKAPADY, EROOR P.O.

BY ADVS. SRI.T.K.KOSHY
SRI.K.P.PAULOSE

RESPONDENTS/RESPONDENTS 1 TO 3 :

- 1 T.K.PAVITHRAN, S/O KRISHNAN,
H.NO.380/6,THEEYATTUPARAMBIL HOUSE,
UDAYAMPAROOR, THRIPIUNITHURA.
- 2 THYAGARAJAN C.G., S/O. GOPALAN
PAINUMGAPARAIL CHARUKOTTAIL HOUSE,
KARIKODU KARA, MULAMTHURUTHY.
- 3 THE UNITED INDIA INSURANCE CO.LTD.
B.NO.4, JOSE TRUST BUILDING,
CHITTOOR ROAD, ERNAKULAM

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
31.08.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is preferred against the award in O.P.(M.V.) No.3432 of 2001 of the Motor Accidents Claims Tribunal, Ernakulam by the injured. Appellant sustained injuries in a motor accident on 12.11.2000 at 8.20 p.m. and the learned Tribunal awarded compensation of Rs.41,200/- (Rupees Forty One Thousand Two Hundred only) with interest and cost. Being aggrieved by that, the claimant preferred this appeal.

2. The accident was not disputed by the respondents in the lower court. The driver and owner were ex parte. The insurer admitted the insurance of the vehicle, but contended that the pillion rider is not covered by the policy. O.P.(M.V.) No.3432 of 2001 and O.P.(M.V.) No.3176 of 2001 were tried jointly. Claimant filed proof affidavit and documentary evidence of Exts.A1 to A11. The learned Tribunal awarded the following amounts as compensation.

Head	Amount Awarded
Transportation, hospitalization, attendant expenses	Rs.1,200/-
Extra nourishment & damage to clothing	-
Medical expenses	Rs.19,000/-

Loss of earnings	Rs.5,000/-
Pain and suffering	Rs.12,000/-
For discomforts & inconvenience	Rs.4,000/-
Total	Rs.41,200/-

3. In ***Yadava Kumar v. D.M. National Insurance Co. Ltd. [2010 (8) SCALE 567]***, Apex Court reiterated the principle in relation to the assessment of damages for personal injuries cases as follows:

“ We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

10. In some cases for personal injury, the claim could be in respect of lifetime's earning lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases, and that is now recognised mode as to the proper measure of compensation-is taking an appropriate multiplier of an appropriate multiplicand.”

4. Appellant contended that he is a Gold Smith and was getting an amount of Rs.3,500/- per month at the time of

accident and he sustained 1. Fracture of (R) zygomatic arch, 2. Fracture of one upper right incisor, 3. Multiple abrasions on both shoulders, both hands, both knees, both feet, 4. 10 c.m. Long laceration on (R) eyebrow, involving (R) eyelid and forehead, 5. 6 c.m laceration below (R) eye with tissue loss, 6. 3 c.m. long laceration on (L) eyelid, 7. 2 c.m. long laceration on (L) ear, 8. Multiple extensive laceration on (L) temporo parietal region, 9. 6 c.m long laceration on upper lips and 10. 4 c.m., long laceration on lower lip. Appellant is entitled to get just amount as compensation. Hence, the following additional amounts are awarded a enhanced compensation to the victim.

Loss of income for three months Rs.10,500/- (Rs.3500x3). The learned Tribunal awarded Rs.5,000/- for loss of income. The balance is Rs.5,500/-. Loss of amenities Rs.6,000/-, Transport to hospital Rs.2,000/-, Pain and sufferings Rs.10,000/-, Damage to clothing Rs.1,500/- . The injured lost one incisor hence an amount of Rs.5,000/- is awarded on that head. The total enhanced compensation is Rs.30,000/- (Rupees Thirty Thousand only).

5. Accordingly, the appellant is entitled to get an

enhanced compensation of Rs.30,000/- (Rupees Thirty Thousand only) with 9% interest and proportionate cost in addition to Rs.41,200/- (Rupees Forty One Thousand Two Hundred only) awarded by the learned Tribunal. Ext.A8 shows that a comprehensive policy was issued hence the insurer is directed to satisfy the award within a period of thirty days from the date of receipt of a copy of this judgment, failing which it will carry 12% interest from the date of default.

M.A.C.A is disposed of as above.

NS

Sd/-
P.D. RAJAN,
JUDGE
*/True Copy/
P.A. To Judge*