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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 28TH DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946

MACA NO. 4214 OF 2018

AGAINST THE AWARD DATED 24.03.2018 IN OPMV NO.1327 OF 2016 OF
MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOZHIKODE

APPELLANT:

SEKKEER V.
AGED 53 YEARS
S/O. MAMMU, VALAPPIL HOUSE, AREEKKAD P.O, NALLALAM,
KOZHIKODE DISTRICT.

BY ADVS.
R.SUDHISH
SMT.M.MANJU

RESPONDENTS:

- 1 SAFIYA P.T.
W/O. ABID HUSSAIN, CHERATTPARAMBATH HOUSE,
PANTHEERANKADAVU POST, MANAKKADAVU,
KOZHIKODE 673 019.
- 2 MUHAMMED FAISAL P.T,
S/O. ABDULLA KOYA, PUTHIYAKADAVU,
NORTH BEACH ROAD, NADAKKAVU P.O,
KOZHIKODE 673 011
- 3 RELIANCE GENERAL INSURANCE CO.LIMITED,
CITADEL ARCADE, OPP. TAGORE CENTENARY HALL, KOZHIKODE
673 001.

BY ADVS.



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**SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW- SC
SMT.PREETHY R. NAIR**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 28.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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J U D G M E N T

Dated this the 28th day of February, 2025

The petitioner in O.P.(M.V.) No.1327/ 2016 on the file of the Motor Accident Claims Tribunal, Kozhikode, is the appellant herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The petitioner filed the above O.P. under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 12.05.2016. According to the petitioner, on 12.05.2016 at about 7 p.m, while he was walking through Kozhikode - Ramanattukara NH Road, a motorcycle bearing Reg.No. KL11-AV-4370 ridden by the 2nd respondent in a rash and negligent manner knocked down him. As a result of the accident, the petitioner sustained serious injuries.

3. The 1st respondent is the owner, the 2nd respondent is the rider and 3rd respondent is the insurer of the offending vehicle. According to the petitioner, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. is



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Rs.1,77,000/-.

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the documentary evidence Exts.A1 to A10 and C1 were marked. No evidence was adduced by the respondents.

6. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.4,16,600/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioner preferred this appeal.

8. Now the point that arises for consideration is the following:

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri.R. Sudhish, the learned Counsel appearing for the petitioner/appellant, and Sri.P.Jacob Mathew the learned Standing Counsel for the 3rd respondent.

10. The Point: In this case the accident as well as valid policy of



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the offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioner is regarding the income of the petitioner as fixed by the Tribunal. According to him, the petitioner was working as Firewood seller, earning Rs.20,000/- per month, but the Tribunal fixed his monthly income at Rs.7,000/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. As per the dictum laid down by the Hon'ble Supreme Court in the decision in ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.*** [2011 (13) SCC 236], the notional income of a coolie, in the year 2016 will come to Rs.10,500/-. Since the petitioner could not prove his job or income as claimed in the OP, in the light of a dictum laid down in the decision of the Hon'ble Supreme Court in ***Ramachandrappa (supra)***, his notional income is liable to be fixed as that of a coolie, at Rs.10,500/-.

12. In the accident, as per Ext. A2 wound certificate and supporting medical records Exts. A7 and A9 series, the petitioner sustained the following injuries:

“type V schatzker right tibia comminuted fracture, hematoma anterior aspect of left knee and deformity and swelling left knee.”



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13. Ext. C1 disability certificate shows that the petitioner suffered 14% permanent physical disability. It was issued by a doctor appointed by the tribunal. The Tribunal, however, scaled down the percentage of disability of the petitioner to 10%, without assigning valid and cogent reasons. The law is settled that, if the Tribunal is not satisfied with the disability certificate produced by the petitioner, the remedy is to refer him to a medical board or higher Authority.(See **Manikantan G. v. Janardhanan Nair and Others**, 2021 (5)KHC 305). Having not done so, the Tribunal was not justified in scaling down the percentage of disability from what is shown in the disability certificate. I do find any grounds to disbelieve the said disability and as such the permanent physical disability of the petitioner is fixed as 14%.

14. On the date of accident, the petitioner was aged 51 years. Therefore, 10% of the monthly income is to be added towards future prospects, as held in the decision in **National Insurance Co.Ltd v Pranay Sethi** [(2017) 16 SCC 680] and the multiplier to be applied is 11, as held in **Sarla Verma v. Delhi Transport Corporation**, (2009) 6 SCC 121. In the above circumstances, the loss of disability will come to Rs.2,13,444,-.

15. Towards loss of earning, the tribunal has awarded only Rs.21,000/-being the income for 3 months @Rs.21,000/-. Considering the



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nature of the injuries sustained and the percentage of disability suffered by the petitioner, the petitioner might have lost income at least for a period of 6 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.63,000 /- (10500x 6months).

16. Towards the head 'pain and sufferings', the Tribunal has awarded Rs.25,000/- and towards 'loss of amenities of life' Rs. 15,000/-was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

17. The petitioner sustained very serious injuries in the accident and was treated as inpatient for 17 days. In the meantime, internal fixation and bone grafting were done. Because of the injuries sustained, the percentage of disability suffered and the length of treatment undergone by the petitioner, I hold that the compensation awarded by the Tribunal on the heads 'pain and sufferings' and 'loss of amenities of life' are on the lower side and hence they are enhanced to Rs.50,000/- and 30,000/- respectively.

18. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

19. Therefore, the petitioner/ appellant is entitled to get a total



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compensation of **Rs.6,19,644/-**, as modified and recalculated above and given in the table below, for easy reference.

Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
1	Loss of earning capacity	92,400/-	2,13,444/-
2	Loss of income	21,000/-	63,000/-
3	Transport to hospital	2,500/-	2,500/-
4	Damage to clothings	1,000	1,000/-
5	Extra nourishment	5,000/-	5,000/-
6	Pain and sufferings	25,000/-	50,000/-
7	Loss of amenities	15,000/-	30,000/-
8	Medical Bills	2,44,500/-	2,44,500/-
9	Bystander expenses	10,200/-	10,200/-
	Total	Rs.4,16,600/-	Rs.6,19,644/-
	Enhanced	Rs.2,03,044/-	

20. In the result, this Appeal is allowed in part, and 3rd respondent is directed to deposit a total sum of **Rs.6,19,644/-** (Rupees Six lakhs nineteen thousand six hundred forty four Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today.



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21. On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioner, excluding court fee payable, if any, without delay, as per rules.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

vnk/-