

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 15TH DAY OF JULY 2022 / 24TH ASHADHA, 1944

MACA NO. 2247 OF 2012

AGAINST THE JUDGMENT IN OPMV 668/1998 OF DISTRICT COURT

& SESSIONS & MOTOR ACCIDENT CLAIMS TRIBUNAL ,KALPETTA

APPELLANT :

NABEESA

AGED 50 YEARS

W/O. HAMZA, KOOPANTHODI HOUSE, NEDUMPALA POST,
MEPPADI, VYTHIRI TALUKL.

BY ADV SMT.CELINE JOSEPH

RESPONDENT :

UNITED INDIA INSURANCE CO.LTD

BRANCH OFFICE, P.B.NO.41, MAIN ROAD, KALPETTA-
673 121.

BY ADV P.K.MANOJKUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 15.07.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

The claimant/injured in O.P.(MV) No.668 of 1998 is the appellant therein. She assails the impugned award dated 28.04.2010, to seek enhancement of the compensation granted under various heads.

2. Heard Smt.Celin Joseph, learned counsel for the appellant and Sri. P.K.Manoj Kumar, the learned counsel for the respondent, Insurance Company.

3. Learned counsel for the appellant submitted that the appellant was a coolie and a house-wife at the time of accident and her income was Rs.3,000/- per month, whereas the Tribunal had reckoned only Rs.1,500/-. Learned counsel submitted that the appellant mounted the box and spoke about her income and no contra evidence has been adduced to disbelieve the same. The value of her service as a house-wife is also liable to be reckoned while reckoning the income, is the submission of the learned counsel for the appellant. Learned counsel for the respondent Insurance Company submitted that no proof of income has been adduced, except the version of PW1. It was also submitted that, before the Tribunal, the claimant claimed Rs.70 per day as a coolie and reckoning the holidays, the monthly income cannot be at any rate Rs.3,000/-.

4. Having heard the learned counsel appearing on both

sides, this Court is of the view that a sum of Rs.2,000/- at least is liable to be reckoned towards monthly income. This Court, taking note of the fact that the appellant/claimant had claimed Rs.3,000/- per month, in her capacity as a coolie, as also, a house wife. She deposed that she was getting Rs.70/- per day. This coupled with the value of service as a house-wife persuades this Court to reckon Rs.2,000/- as her monthly income. It is so done.

5. The next head is with respect to loss of earning capacity which has been reckoned as two months by the learned Tribunal. The learned counsel for the appellant submitted that the appellant suffered a fracture on the right humerus, with radial nerve injury. She suffered 5% permanent disability also. In such circumstances, loss of earning reckoned for two months is on the lower side. This Court is of the view that her loss of earning can be reckoned as 5 months, since she had undergone in-patient treatment for 14 days and considering the fact that she was a coolie at the time of accident. The next head is pain and sufferings, where again, the reasons which weighed while considering loss of earning capacity looms large. Therefore, the loss on account of pain and suffering is enhanced to Rs.25,000/- particularly in view of the fracture sustained and 14 days of hospitalization. The next head is loss of amenities. The learned counsel pointed out that she had suffered 5% permanent disability. There also her avocation as a coolie and that she was a house-wife

are liable to be reckoned, is the submission of the learned counsel. The disability has also crippled her day-to-day activities as well. In such circumstances, it would be reasonable to grant Rs.10,000/- towards loss of amenities against which head no amount was granted by the Tribunal. Expenses for transportation is enhanced to Rs.1,000/- since there is a travel from Meppadi to the hospital and back to her place. Expenses for extra nourishment, which is reckoned at Rs.500/-, is also enhanced to Rs.1,000/-

6. The learned counsel for the Insurance Company pointed out that admitted age of the appellant/claimant at the time of accident was 36 and the correct multiplier is 15, as against 16 taken by the Tribunal. This error is also liable to be rectified.

7. In the circumstances, the appeal is allowed and the compensation awarded is re-worked as follows:

| Sl. No. | Head of claim | Amount awarded by the Tribunal(Rs) | Total amount after enhancement in appeal (Rs.) |
|---------|---------------------------------------------------|------------------------------------|------------------------------------------------|
| 1 | Loss of earnings | 3000 | 10000 |
| 2 | Pain and suffering | 15000 | 25000 |
| 3 | Loss of amenities | - | 10000 |
| 4 | Transportation | 500 | 1000 |
| 5 | Extra nourishment | 500 | 1000 |
| 6 | Permanent disability | 14400 | 18000 |
| | Total | 33400 | 65000 |
| | Amount enhanced = Rs.31600 (65000 - 33400) | | |

8. The Insurance Company shall pay interest for the amounts awarded by the Tribunal at the rate directed in the

impugned award and for the enhanced amounts at the rate of 5% from the date of petition. If any amount has already been paid, the same shall be granted set off. The claimants shall produce the details of the Bank account before the Insurance Company/Tribunal within one month from the date of receipt of a certified copy of this judgment and amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not furnished within the time stipulated, it is made clear that no interest shall run on the enhanced amount after the period stipulated by this Court. However, if the Insurance Company fails to deposit the amount as directed, interest on enhanced amount shall also run at the rate ordered by the Tribunal from the date of petition.

Sd/-

C. JAYACHANDRAN
JUDGE

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