

'C.R'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 25TH DAY OF FEBRUARY 2022 / 6TH PHALGUNA, 1943

MACA NO. 1288 OF 2015

AGAINST THE AWARD DATED 8-10-2014 IN OPMV 413/2011 OF MOTOR

ACCIDENT CLAIMS TRIBUNAL, TIRUR.

APPELLANT/PETITIONER :

K.C.SHAMSUDHEEN , AGED 45 YEARS,
S/O.MOHAMMED KUTTY K.C., KARINGAPPARA,
CHOORAKUZHIYIL HOUSE, PUNNATHALA P.O.,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADVS.

SRI.K.P.SUDHEER

SRI.Y.JAFAR KHAN

RESPONDENT/3RD RESPONDENT :

BAJAJ ALLIANZE GENERAL INSURANCE CO.LTD.
3RD FLOOR, FINANCE TOWER, NEW INDIAN
EXPRESS,KALOOR, KOCHI-1.

(NO RELIEF CLAIMED AGAINST 1ST AND 2ND RESPONDENT
IN OPMV NO.413 OF 2011. HENCE THEY ARE NOT MADE
PARTIES IN THIS APPEAL.)

BY ADVS.

SRI.T.R.JERRY SEBASTIAN

SRI.THOMAS M.JACOB

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 25.02.2022, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

'C.R'

K.VINOD CHANDRAN, J

M.A.C.A.No.1288 of 2015

Dated this the 25th day of February, 2022

JUDGMENT

The appellant, a 35 year old man, suffered an injury in a motor vehicle accident, which occurred in the year 2008. The appellant's claim is for enhancement of compensation.

2. The learned counsel for the appellant submits that there were two assessments made by the District Medical Board and also the State Medical Board. The Tribunal adopted that of the State Medical Board.

3. The learned Standing Counsel for the Insurance Company submits that the State Medical Board's opinion was sought specifically for the reason of the objection raised by the Insurance Company. Hence, the appellant was referred to the State Medical Board and the assessment was made at 7%

4. This Court has to notice that many a time, when assessment is made by a Medical Board, it is based on some notification or circular, which deals with disability assessment for

employment or for transport concession and so on and so forth. In fact, when assessment of disability is sought for before a Medical Board for the purpose of claiming compensation under the Motor Vehicle's Act, the disability to be assessed is of the disability occasioned in the earning power, that too not necessarily in the declared avocation but by general standards. The Tribunals and also the Medical Board should be careful in ensuring that the disability assessed is of the loss of earning power and not based on any other circulars or notifications, totally unconnected with the disability assessment with regard to a motor accident claim.

3. As far as the present case is concerned, the Tribunal adopted Rs.4,000/- as notional income. Going by ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. : (2011) 13 SCC 236***, the Hon'ble Supreme Court fixed the notional income of a coolie as Rs.6,500/- in the year 2008. The only enhancement possible is under the notional income. Enhancement is made as per the tabulation below:

| Sl. No. | Head of Claim | Amount awarded by the Tribunal Rs | Total amount after enhancement in appeal Rs |
|---------|--------------------------|--------------------------------------|--|
| 1 | Loss of earning (Total) | 24000 | 6500 x 6 = 39000 |
| 2 | Loss of earning(Partial) | Nil | Nil |

| | | | |
|--|---|----------|---|
| 3 | Medical, miscellaneous & bystander expenses | 135000 | 135000 |
| 4 | Future treatment | Nil | Nil |
| 5 | Bystander expenses | Nil | Nil |
| 6 | Transportation expenses | 5000 | 5000 |
| 7 | Extra nourishment | 2000 | 2000 |
| 8 | Damage to clothing, etc | 500 | 500 |
| 9 | Pain and suffering | 30000 | 30000 |
| 10 | Loss of dependency | Nil | Nil |
| 11 | Loss of consortium | Nil | Nil |
| 12 | Loss of love and affection | Nil | Nil |
| 13 | Loss of estate | Nil | Nil |
| 14 | Compensation towards permanent disability & loss of earning power | 50400 | $6500 \times 12 \times 16 \times 7\% = 87360$ |
| 15 | Compensation for loss of amenities | 10000 | 10000 |
| 16 | Any other heads : Loss of earning power | Nil | Nil |
| | Funeral expenses | Nil | Nil |
| | Disfiguration | 5000 | 5000 |
| | Total | 2,61,900 | 313860 |
| Amount enhanced : Rs.3,13,860/- - Rs.2,61,900 =Rs.51,960/- | | | |

4. 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. Since there was a delay of 134 days in filing the appeal, interest for the enhanced quantum would not run for the said period. If any amounts have already been paid, the same

shall be granted set off. The claimant(s) 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 given 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 the enhanced amount shall also run at the rate ordered by the Tribunal from the date of petition.

The appeal is allowed to the above extent.

Sd/-
K.VINOD CHANDRAN
JUDGE

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