

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&  
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

MFA.No. 403 of 2001 ( )  
-----

AGAINST THE JUDGMENT IN OPMV 69/1998 of MACT,THRISSUR  
DATED 11-01-2001

APPELLANT/PETITIONER  
-----

ASIQUE (MINOR), S/O.MOHAMMED  
REP.BY FATHER AND GUARDIAN  
MOHAMMED, S/O AHAMMED, CHAKKU VALAPPIL HOUSE  
KAZITHALLORE, KUTTIPURAM

BY ADVS.SRI.T.I.ABDUL SALAM  
SRI.P.K.MUHAMMED

RESPONDENTS/RESPONDENTS:  
-----

1. G.MURUKESAN,  
S/O GOPALAKRISHNA PILLAI  
MANNARKKAD P.O., KURIYATHI
2. A.BASHEERKUTTY, S/O ALIYARKUNHU  
KALLUVILLA PUTHAN VEEDU  
KIZHAVOOR, MUKKUTHALA P.O.  
KOLLAM, KERALA
3. UNITED INDIA INSURANCE CO. LTD  
III FLOOR, CWC BUILDING  
LMS COMPOUND, P.B.NO.651  
TRIVANDRUM 695 033

R3 BY ADV. SRI.RAJIT.T.BHASKAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON  
06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &  
P.V.ASHA, JJ.**

-----  
**M.F.A.No.403 OF 2001**  
-----

Dated this the 6<sup>th</sup> day of January, 2015

**JUDGMENT**

Ramachandran Nair, J.

The injured, a minor aged six years represented by his guardian is the appellant herein. The accident occurred on 1/08/1997 at about 12.30 p.m. While he was walking through the side of the road at Valacherry, a lorry bearing Reg.No. KL 28/5175, which was driven by the first respondent, hit the child. He sustained serious injuries in the accident and both the bones of right leg were fractured and head injury was also sustained by him. The right leg had to be amputated below knee. The total compensation awarded by the Tribunal is ₹1,27,000/-, which according to the learned counsel for the appellant is totally inadequate.

2. We find from the details available at paragraph 6 of the judgment that he was treated as inpatient for a period of 87 days in total in three different spells. First one is from 1.8.1997 to 10.09.1997

in Al-Shifa Hospital, Perinthalmanna. The second spell is from 21/09/1997 to 26/09/1997 in the same hospital and the third one is from 21/10/1997 to 18/11/1997 therein. He was taken to the Heart Hospital, Thrissur and was treated there from 26/11/1997 to 10/12/1997.

3. The Tribunal has granted compensation in the following manner :

| <i>Head of claim</i>                                 | <i>Amount Awarded in rupees</i> |
|------------------------------------------------------|---------------------------------|
| Transport to hospital                                | 1000                            |
| Extra nourishment                                    | 1000                            |
| Medical expenses supported by medical bills produced | 32000                           |
| Bystander's expenses                                 | 4000                            |
| Pain and suffering                                   | 12000                           |
| Cost of artificial legs to be changed                | 42000                           |
| Permanent disability                                 | 35000                           |
| Total                                                | 1,27,000/-                      |

4. The learned counsel for the appellant submitted that going by the schedule to the Workmen Compensation Act, the disability will

be 50% . It is true that the disability certificate was not produced before the Tribunal. The learned counsel for the Insurance Company also pointed out that documentary evidence was not available. But since there is no dispute that the right leg was amputated, we will be justified in adopting the percentage of disability by reference to any relevant factor. Accordingly, we fix the percentage of disability as 50% in the light of the amputation of the right leg.

5. Being a child, there will be difficulty to fix the monthly income. The Apex Court in **Master Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Another (2013(3) KLJ 815)** has laid down that in such cases a uniform method can be adopted. We extract paragraph 12 herein below:

*“Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant etc. should*

*be, if the disability is above 10% and upto 30% to the whole body, Rs. 3 lakhs; upto 60%, Rs.4 lakhs; upto 90% Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs. 1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents.”*

6. Therefore for percentage of disability upto 60%, compensation to the tune of ₹ 4 lakhs can be granted in addition to the actual expenditure for treatment, attendant etc. Since the child was treated as an inpatient for a period of 87 days, the bystander's expenses granted is totally inadequate. Since the accident is of the year 1997, we will be justified in taking the expenses at ₹150/- per day and the total compensation for bystander's expenses will be ₹13,050/-. Since he was treated on three different occasions in the same hospital and lastly in another hospital, we award an amount of ₹5000/- towards expenses for transportation to hospital. We delete the amount awarded towards pain and suffering as the same is taken while awarding ₹4 lakhs.

Hence we refix the compensation in the following manner :

| <i>Head of claim</i>                                 | <i>Amount Awarded in rupees</i>                                     |
|------------------------------------------------------|---------------------------------------------------------------------|
| Transport to hospital                                | 5000                                                                |
| Extra nourishment                                    | 1000                                                                |
| Medical expenses supported by medical bills produced | 32000                                                               |
| Bystander's expenses                                 | 13050                                                               |
| Cost of artificial legs to be changed                | 42000                                                               |
| Permanent disability                                 | 400000                                                              |
| Total                                                | 493050<br>( Rupees four lakhs ninety three thousand and fifty only) |

7. The amount will carry interest at the same rate granted by the Tribunal. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed.

**T.R.RAMACHANDRAN NAIR, JUDGE**

SV

**P.V.ASHA, JUDGE**