

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

MACA.No. 1720 of 2004 ()

AGAINST THE AWARD IN OPMV 913/1997 of M.A.C.T.,ERNAKULAM DATED
16-08-2003

APPELLANT/PETITIONER:

T.S.SIVANKUTTY, AGED 30 YEARS
S/O. LATE VISWANATHAN PILLAI, THOPPIL HOUSE
NEAR UNION CLUB, THIRUNAKKARA P.O., KOTTAYAM -1.

BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.JACOB SEBASTIAN
SRI.PRAVEEN K. JOY

RESPONDENTS/RESPONDENTS:

1. V.K.SAINABA, S/O PAREED PILLAI
THACHAVALLATH HOUSE, THAIKKATTUKARA, ALUVA-6 (DIED)

2. RAJU S/O. UNNI, ERUTHIYIL HOUSE,
CHENGAMANAD, ALUVA.

3. ORIENTAL INSURANCE CO.LTD.,
COCHIN-35.

4. THE NEW INDIA ASSURANCE CO.LTD.,
COCHIN-11.

ADDITIONAL RESPONDENTS

5. DR.MUHAMMED THASLEEM
S/O PAREED PILLAI
THACHAVALLATH HOUSE, THAIKKATTUKARA, ALUVA-6

6. NASIYA, D/O PAREED PILLAI
THACHAVALLATH HOUSE, THAIKKATTUKARA, ALUVA-6

7. SEEMA, D/O PAREED PILLAI
THACHAVALLATH HOUSE, THAIKKATTUKARA, ALUVA-6

* THE LEGAL HEIRS OF DECEASED FIRST RESPONDENT IMPEADED AS
ADDITIONAL RESPONDENTS 5 TO 7 AS PER ORDER DATED 19.11.2014 IN
I.A.NO.459/2014

R4 BY ADV. SRI.KKM.SHERIF
R4 BY ADV. SRI.A.A.ZIYAD RAHMAN
R4 BY ADV. SRI.LAL K.JOSEPH
R3 BY ADV. SRI.VPK.PANICKER
R2 BY ADV. SMT.K.M.RASHMI (PARAVOOR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.1720 OF 2004

Dated this the 5th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant aggrieved by the inadequacy of compensation. The accident in this case occurred on 21.12.1996 while the appellant was riding his motor cycle bearing Reg.No.KLO 2395 through Shanmugham road, Ernakulam. It was hit by a bus bearing Reg.No.KL-7G-2300, which was driven by the second respondent before the Tribunal. After he was thrown off, the front left wheel of the bus ran over his right palm causing a crush injury. The third respondent before this Court is the Insurance Company which is found liable to satisfy the award. The appellant claimed for a total amount of ₹8 lakhs before the Tribunal and the Tribunal has awarded ₹1,48,700/- with 9% interest from the date of filing of the petition.

2. Before us, the learned counsel for the appellant

Sri.Varghese C.Kuriakose submitted that the appellant suffered very serious injuries. It has crippled his life like anything as he had to discontinue the job as a Sales Assistant and now he is working in the packing section of Vidharthi Mithram. It is submitted that the appellant had to continue his treatment for a long time and the learned counsel submits that apart from the fact that compensation granted under various heads is inadequate, the appellant had to incur large amount towards future treatment. No provision has been made in the award for expenses for meeting future treatment and the appellant has produced along with I.A.No.2856/2013 the various medical bills representing the amounts spent as well as medical certificates to show the extent of disability.

3. The appellant was examined as PW1 before the Tribunal and PW2 is an occurrence witness and PW3 is the doctor who treated the appellant in the Medical College Hospital. Before the Tribunal, various documents have been marked in evidence, namely Exts.A1 to A26 by the appellant. Ext.B1 is the true copy of the Policy. Ext.X1 is the case sheet from the Medical Trust Hospital. Apart from PWs 1 to

3, PWs 4 and 5 have also been examined. Respondents have not examined any witness.

4. The Tribunal after considering various aspects found that the driver of the bus was negligent in causing the accident and also that there was also a valid policy for the offending vehicle.

5. The Tribunal in paragraph 10 of the award after considering the details in Ext.A4 wound certificate has described the injuries sustained in the following manner :

“ 1. Crush injury to right hand with loss of thumb (traumatic amputation). Badly damaging the skin, subcutaneous tissue and muscles. Badly contaminated.

2. Multiple abrasions on the right forearm, right elbow, left forearm and left wrist.”

6. It is seen that the appellant was in the Medical Trust Hospital as an inpatient for a period of one month and he had to undergo several operations including skin flapping. The flap was taken from his abdomen. Ext.A5 is the discharge summary which will show that he has suffered multiple lacerations on all fingers of right palm including crush degloving injury of right hand with loss of

thumb. There was damage to skin, subcutaneous tissues and muscles. This has happened due to the fact that his right hand was run over by the bus. Thereafter he continued physiotherapy and other treatment and he was also advised to undergo microsurgical toe transfer to hand. He had adduced evidence to show that he had certain consultation in that manner. The Medical Board attached to the General Hospital assessed his disability as 50% as evident from Ext.A11.

7. The learned counsel for the appellant submits that in spite of the disability certificate issued by the Medical Board, the Tribunal has reckoned the disability only at 20%. It, according to the learned counsel, does not reflect the ground realities and the Tribunal has not reckoned various aspects including nature of the injuries and the after effect of the injuries resulting in even the change of job for him.

8. The learned counsel for the Insurance Company submits that the Tribunal even though was having medical disability certificate, it can independently assess the percentage of disability so as to grant compensation for loss of earning power and therefore there is nothing wrong in the said conclusion.

9. As far as the monthly income of the appellant is concerned, he had adduced evidence by producing Exts.A14 and A15. Ext.A14 will show that he was having a monthly salary of ₹4,500/- which includes commission. The Manager of the Book Depot has been examined as PW5. He has given evidence in tune with the contentions of the appellant. Ext.A23 has been produced to show that he was depromoted to packing and forwarding despatch section on a daily wage of ₹50/- on working days. Ext.A15 will show that he was on loss of pay leave from 21.12.1996 to 01.09.1997. The Tribunal for the purpose of assessing compensation has taken the monthly income as ₹1,500/-.

10. As far as additional evidence produced before this Court is concerned, the learned counsel has made available a calculation statement, going by which the total amount will be ₹1,33,504.02 out of which ₹1042.05 has been spent for Ayurvedic treatment. Apart from the same, Serial Nos. 112 onwards are documents relating to treatment in Bharat Hospital in connection with cardiac problem which have to be excluded. After excluding those amounts, the balance

amount towards future treatment expenses incurred after the award and during the pendency of the appeal will be ₹109,700/-. The last of the bills is dated 27.8.2005. We admit the documents in evidence and mark them as Ext.A27 series. It is seen from the documents that he was treated in the Specialists Hospital, Ernakulam and bone grafting was done to the carpal bone and the discharge summary dated 1.12.2004 and 29.08.2005 and 27.09.2005 from the Dept. of Plastic Microvascular Cosmetic and Laser Surgery of the Hospital show the details of treatment.

11. We are satisfied that he has undergone further treatment for the injury sustained in the accident itself. It is seen that bone grafting was done and metacarpal was fixed with K wire on 16/08/2005. One of the certificates produced by the appellant is that of the Medical Board attached to the General Hospital dated 23.07.1997, among Ext.A27 series, wherein the percentage of disability has been finally settled as 40%. It is recorded therein that he is suffering from traumatic amputation of right thumb with loss of thenar aspect upto wrist and partial stiffness of fingers. Arguments were raised on both sides with

regard to the percentage of disability. Apart from the above certificate, the appellant has also produced the disability certificate dated 22.10.1997 issued by the Medical Board attached to the Medical College Hospital, Kottayam, wherein also it is recorded that he is suffering from traumatic amputation of right thumb and permanent disability is noted as 40%. As regards the percentage of disability is concerned, even going by the disability certificate originally issued by the competent medical board, the assessment was 50%. The percentage of disability going by the certificates which we have noted already shows that after the reconstruction also, his disability is 40%. Evidently, amputation of right thumb with loss of thenar aspect will deprive him of the use of right hand effectively and it has resulted in his demotion to another section. In the light of the above, we will be justified in accepting the physical disability and functional disability as 40%. There is stiffness of the fingers which has been noted by the Medical Board.

12. Even going by the Employees Compensation Act, 1923 and the schedule, it can be seen that percentage of disability for loss of

thumb itself will be 30% and for loss of thumb with metacarpal bone, it is 40%. Therefore, the disability certificate reflects the correct picture and we adopt the said percentage. It is also submitted by the learned counsel for the appellant that the amount awarded towards pain and suffering and loss of amenities also require suitable modification.

13. As far as the monthly salary is concerned, it is seen that the appellant was having ₹4,500/- as income as on the date of the accident. Of course it is seen that he was depromoted to the packing section. But for the purpose of assessing the compensation, we will take the monthly income as on the date of the accident itself. He was on loss of pay leave for a period of eight months and above and therefore this Court will be justified in granting partial loss of earnings for a period of eight months. In the light of the subsequent treatments undertaken by him, we award an amount of ₹1,09,700/- towards future treatment.

14. Accordingly, we refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	36000 (8 x 4500)
Transport to hospital	2000
Damage to cloths	500
Extra nourishment	3000
Expenses for bystander	2500
Medical treatment	26500
Pain and suffering	50000
Loss of amenities	50000
Disability	367200 (4500 x 12 x 17 x 40%)
Future treatment expenses	109700
Total	647400 (Rupees six lakhs forty seven thousand four hundred only)

15. Thus the total amount of compensation will be ₹6,47,400/-. Out of the total compensation, the amount except ₹1,09,700/- will carry interest @ 9% per annum from the date of petition. Since the amount of ₹1,09,700 represents the expenses for future treatment which occurred after the passing of the award, we adopt the date of the last bill for the purpose of granting interest.

Among Ext.A27 series, the last of the same is dated 27.08.2005 namely Serial No.111. As far as the said amount of ₹ 1,09,700/- is concerned, interest @ 9% will be due from 27/08/2005 till payment. There will be a direction to the third respondent Insurance Company to deposit the amount less the amount of compensation with interest already deposited before the Tribunal, within a period of three months.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.