

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 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

MACA.No. 142 of 2005 ()

AGAINST THE AWARD IN OP(MV) 1637/1997 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,KOTTAYAM DATED 30-06-2003

APPELLANT/CLAIMANT:

M.A.ABDUL SALAM @ SALAM,
S/O.ABDUL KHADAR, MANIPARAMBU, ARUPUZHA
THAZHATHANGADY P.O., KOTTAYAM.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS/RESPONDENTS:

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1. ARAVINDHAKSHAN, S/O.PURUSHOTHAMAN,
KUMARATHUSSERIL, MANNECKAL BHAGHOM, KUMARAKOM
KOTTAYAM.
 2. SUNIL KUMAR, S/O.SUKUMARAN,
AMBALAKADAVIL HOUSE, NR: TEMPLE, VIRUPPUKALA
AYMANAM, KOTTAYAM.
 3. NEW INDIA ASSURANCE COMPANY LTD.

- * 4. M.S.RAHIM,
PUTHEN VEETIL, KARIKODE, THODUPUZHA.[DELETED]

*[RESPONDENT NO.4 IS DELETED FROM PARTY ARRAY AS EPR ORDER DATED
11.6.2015 IN MACA142/2005]

5. THE ORIENTAL INSURANCE CO.LTD.,
THODUPUZHA.

R3 BY ADV. SRI.A.C.DEVY
R5 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

M.A.C.A.No.142 of 2005

Dated this the 8th day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This is an appeal preferred by the claimant in O.P.(M.V.)No.1637/1997 challenging the quantum of compensation awarded by the Tribunal.

2. The facts stated is as follows:

On 24.12.1996, while the appellant was accompanying his goods in an autorickshaw bearing registration No.KL5E/348 it collided with a lorry bearing registration No.KLI 5967 and in that accident the appellant sustained grievous injuries. When claim application was moved before the Tribunal claiming a total compensation of Rs.4 lakhs, after appreciating the evidence the Tribunal only awarded a sum of Rs.93,800/-, which is under challenge.

3. When the appeal came up for hearing, learned counsel for the appellant argued before us that the

appellant sustained very serious injuries. As per the records produced before the Tribunal, the appellant sustained fracture to the scapula left humerus, fracture to left radius and ulna and lacerated injury on the shoulder, forearm and there was also abrasion. He was initially treated in the Medical College Hospital for 23 days and he produced medical bills for an amount of Rs.6,044/-. The main grievance of the appellant is that even though the disability was assessed by a Medical Board as 58%, the Tribunal adopted only 10% for the assessment purpose. It is the further submission that the appellant was a fish vendor by profession. While he was carrying fish in an autorickshaw, the accident occurred. Even though it was proved that he was a fish vendor by profession, only an income of Rs.2,000/- considered by the Tribunal. He was of the age group 26. Thus the compensation awarded is insufficient.

4. The learned counsel for the third respondent Insurance Company, submitted before us that the accident occurred as back as in 1996. It is also the submission that

the Medical Board assessed the disability which pertains only to a particular limb. Only a partial disability is assessed by the Insurance Company. Under such circumstances, the Tribunal rightly adopted only a percentage of 10 for the assessment purpose. It is also the submission that when there is no evidence with regard to the actual income of the appellant, the Tribunal liberally considered an income of Rs.2,000/- for the assessment purpose. Under such circumstances, no interference by this Court is warranted.

5. We perused the records. Ext.A15 disability certificate is issued by a Medical Board after examination. 58% disability is seen found. But it is partial in nature. The injury sustained by the appellant are grievous in nature. But surely it is written in the certificate that it pertains to a particular limb. But at the same time the profession of the appellant is fish vending. His avocation will be affected by the disability. Thus it will be only just and proper to adopt a functional disability of 25% even though the disability assessed is only pertaining to that particular limb. The

appellant is a fish vendor. The accident occurred while he was travelling with his goods. Under such circumstances, considering the period in which the accident occurred as well as all other attending circumstances, an income of Rs.2,500/- is considered for the purpose of calculation of compensation. Considering the gravity of the injury as evidenced from the records available before us, the compensation is re-fixed as follows:

Head of claim	Amount re-fixed in Rs.
Compensation for permanent disability	$2500 \times 12 \times 17 \times 25 / 100$ 127500
Bystander's expenses	2500
Extra nourishment	2500
Transportation	2500
Damage to clothing	1000
Pain and suffering	35000
Loss of amenities	35000
Future treatment	10000
Loss of earnings for 6 months	15000
Treatment expenses	6000
Total	2,37,000

Thus the appellant is entitled for a total compensation of Rs.2,37,000/- (Rupees two lakhs thirty seven thousand only).

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

There will be a direction to the third respondent Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On deposit, the appellant will be entitled for the release of the amount.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/