

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

MACA.No. 18 of 2012 ()

AGAINST THE AWARD IN OPMV 28/2006
ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE AND ADDITIONAL MOTOR
ACCIDENTS CLAIMS TRIBUNAL, PATHANAMTHITTA DATED 07-05-2011

APPELLANT/PETITIONER:

MANOJ IDICULAI VARGHESE,
S/O. VARGHESE,
PEEDIKAYIL HOUSE,
MANJADI P.O.,
THIRUVALLA.

BY ADVS.SRI.S.SUBHASH CHAND
SMT.V.AJITHA

RESPONDENTS/RESPONDENTS:

1. JAYAKUMAR (BINOY), IIIRD DIVISION,
CHERUVALLY ESTATE,
CHENAPPADY, ERUMELI-686509.
2. PUSPA MATHEW, W/O.OOMMEN MATHEW,
THOLOOPARAMPIL HOUSE,
THEEPANI, THIRUVALLA -689101.
3. NEW INDIA ASSURANCE CO. LTD.
BRACH, MOOVATTUPUZHA - 686661.S

R3 BY ADV. SRI. MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P. JACOB MATHEW
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.18 of 2012

Dated this the 12th day of March 2015

JUDGMENT

Ramachandran Nair , J.,

This appeal is filed by the claimant in O.P.(MV) No. 28/2006 before the Motor Accidents Claims Tribunal, Pathanamthitta. The accident occurred on 13.11.2005 at about 10 p.m while he was riding his motor cycle bearing Registration No. KL 03/M-3367 along the Thiruvalla-Kozhenchery public road. The offending vehicle, a stage carriage bus bearing registration No. KL-07/G-6505 hit the motor cycle and the appellant sustained the following injuries:

- i) Head injury
- ii) Lacerated wound on the left side of forehead.
- iii) Fracture left Zygoma.
- iv) Fracture anterior and posterior wall of left maxilla.
- v) Fracture left Zygomatic arch.

- vi) Fracture posterior lateral wall of left orbit.
- vii) Fracture and depression of Zygomatic frontal bone.
- viii) Abrasion on left elbow. Vide Ext.A7 to A9.

2. It shows that there were 5 fractures and he was treated in the Pushpagiri Medical College Hospital, Thiruvalla. The total compensation claimed is Rs. 1,50,000/- and the Tribunal granted total compensation of Rs.66250/- under different heads.

3. The learned counsel for the appellant submitted that the assessment of monthly income at the rate of Rs.2,500/- is too low. It is submitted that he was working as a PRO in the Muthoot C.T.Scan & Research Centre, Karunagappally. Learned counsel for the Insurance Company submitted that no evidence was adduced in support of the above claim.

4. The accident is of the year 2005. According to us, Rs. 2,500/- is too low and therefore, we fix it at Rs. 3,500/- per month for the purpose of calculating the compensation for permanent disability. The percentage of disability assessed is 5%. But the tribunal has not granted any amount towards permanent disability. Evidently, there is no reduction in earning capacity. The age of the appellant is 35 years at the time of the accident. Therefore, the correct multiplier is 16.

5. As regards bystander's expenses, the learned counsel for the appellant submitted that for 19 days in the hospital, the tribunal has granted only Rs. 1,900/- at the rate of Rs. 100/- per day. We enhance it as Rs. 3,800/- at the rate of Rs.200/- per day.

6. The next item is pain and suffering. Rs. 15,000/- was granted by the Tribunal as against the claim of Rs. 25,000/-. It is clear from the evidence that he suffered very serious injuries and was hospitalised for a period of 19 days as inpatient. In the light of the above, we are of the view that Rs.25,000/- claimed is reasonable. Accordingly, we grant the same. As far as permanent disability is concerned, it will be Rs. $3500 \times 12 \times 16 \times 5 / 100 =$ Rs. 33600/-. Accordingly, we modify the award as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amt.awarded</i>	<i>Amt.modified</i>
1	Loss of earnings	7500	10500
2	Transportation expenses	1000	1000
3	Extra nourishment	2000	2000
4	Damage to clothing	500	500
5	Medical expenses	28350	28350
6	Bystander expense	1900	3800
7	Pain and suffering	15000	25000
8	Permanent disability & - loss of earning power		33600
9	Loss of amenities	10000	10000
	Total	66250	115650

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7. Therefore, the total compensation will be Rs. 1,15,650/- (Rupees One lakh Fifteen Thousand Six hundred and Fifty only). The enhanced compensation will carry interest at the rate of 9% p.a. from the date of petition. The appeal is allowed. The Insurance Company is directed to deposit the amount in three months and we permit the appellant to withdraw the amount as and when it is deposited.

The parties will suffer their costs in this appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge