

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 538 of 2005 ()

**AGAINST THE AWARD IN OP(MV) 1194/2002 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,PUNALUR DATED 14-01-2005
APPELLANT/PETITIONER:**

**ABDUL KHADER, S/O. MYTHEENKUNJU
KANNANKODE KUNNUMPURATHU VEEDU, CHADAYAMANGALAM.**

**BY ADVS.SRI.ALEXANDER GEORGE
SRI.DILIP MOHAN**

RESPONDENT(S):

**1. SHOWKATHALY B. KADAYIL VEEDU
CHADAYAMANGALAM.**

**2. ANVAR.S., ANVAR MANZIL,
CHADAYAMANGALAM. [DELETED]**

**[RESPONDENT NO.2 IS DELETED FROM PARTY ARRAY AS PER ORDER
DATED 11.6.2015 IN I.A.1973/2015 IN MACA 538/2005]**

**3. ORIENTAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, P.B.NO. 228, LIC BUILDING
CHINNAKKADA, KOLLAM.**

**R1 BY ADV. SRI.M.SREEKUMAR
R3 BY ADV. SRI.TITUS MANI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.538 of 2005

Dated this the 22nd day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant who was a rubber tapper got involved in an accident while he was travelling in an auto rickshaw on 6.6.2001 at about 7.30 p.m. Near Ulavacodu junction, it capsized to the left side of the road and he was immediately taken to St. Joseph's Hospital, Anchal. He was initially admitted as an inpatient and after discharge he was treated as outpatient.

2. It is claimed that he was a rubber tapper, aged 52 as well as an agriculturist and was earning Rs.7,000/- per month.

3. Heard both sides.

4. In the Accident Register-cum-wound certificate, the injuries noted are: (1) Crush injury with self amputation of the right thumb from its proximal phalangeal area bone exposed. (2) Multiple deep abrasions of the fingers of both hands (3) Lacerated wound over the left big toe (4) Swelling

over the left knee.

5. The Tribunal did not grant any amount towards permanent disability since the disability certificate was not produced. As regards the income also even though Ext.A6 certificate issued by the employer was produced showing that he was a rubber tapper it was not fully accepted and his monthly income has been fixed as Rs.2,000/-. Compensation has been awarded for loss of earning power for a period of 10 months at Rs.20,000/- and including the other items the total amount will come to Rs.32,974/-.

6. Learned counsel for the appellant submitted that even going by the Schedule of the Workmen's Compensation Act there will be 30% disability for the loss of thumb.

7. Learned counsel for the Insurance Company submitted that going by the pleadings he may not be suffering that much percentage of disability.

8. After having examined the wound certificate and the injuries sustained by him including the amputation, we fix the percentage of disability as 25. Of course, the period

of treatment is ten days as an inpatient. We fix an amount of Rs.3,000/- as his monthly wages considering the fact that he was a rubber tapper and he would have been engaging himself for other avocations also as a daily labourer. The partial loss of earnings granted is only for one month which we grant for two months. We also re-fix the compensation for pain and suffering and grant a reasonable amount towards loss of amenities in view of the permanent disability and other inconveniences in life. Hence, we re-fix the compensation in the following manner:

Head of claim	Amount awarded in Rs.
Loss of earning for two months	2x3000 6000
Transportation expenses	1000
Extra nourishment	750
Medical Bills	1574
Pain and suffering	20000
Permanent disability	3000x12x11x25/100 99000
Loss of amenities	10000
Total	138324 (Round off to Rs.1,38,350/- (Rupees one lakh thirty eight thousand three hundred and fifty only)

The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation and the 3rd respondent Insurance Company is found liable to meet the liability.

There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount after the same is deposited by the Insurance Company.

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/