

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 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

MACA.No. 522 of 2006 ()

AGAINST THE AWARD IN OPMV 3130/2000 of MACT, THRISSUR

APPELLANT/PETITIONER.:

AMBROSS, S/O.RAJAYYA,
MUNICIPAL STAFF QUARTERS, THRISSUR.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENTS.:

1. ALEX, S/O.JOHNY, AKKARA HOUSE,
POLICE STATION ROAD, THRISSUR. (DELETED)

2. A.K.JOHNY, AKKARA HOUSE,
POLICE STATION ROAD, THRISSUR.

3. THE UNITED INDIA INSURANCE CO.LTD.,
BRANCH OFFICE, KURUPPAM ROAD, THRISSUR.

RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE PETITIONER VIDE ORDER DATED 5.7.2006 IN I.A.NO.1177/2006

R3 BY ADV. SRI.J.MATHAPPAN

R2 BY ADV. SRI.DILIP J. AKKARA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 27-01-2015 ALONG WITH MACA NOS.524/2006 & 585/2006,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.Nos.522, 524, 585 OF 2006

Dated this the 27th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals arise from the common judgment of the Motor Accidents Claims Tribunal, Thrissur in O.P.(MV)Nos.2643/2000, 2754/2000, 2756/2000, 2757/2000, 3130/2000, 3131/2000 and 3132/2000.

2. M.A.C.A.Nos.522/2006, 524/2006 and 585/2006 are against the awards in O.P.(MV)Nos.3130/2000, 3132/2000 and 2754/2000 respectively.

3. It is a case where the accident occurred on 5.9.2000. The appellants in M.A.C.A.No.585/2006 are the widow, children and mother of deceased Nelson. In the other two cases, the compensation is claimed for the personal injuries sustained by the appellants themselves. All of them were travelling in a Tata sumo bearing Reg.No.KL-8/K8 739 which hit against a lorry bearing Reg.No.TN 72

W/1654 at a place called Nellai.

4. First we come to the facts of M.A.C.A.No.585/2006. The deceased as well as the appellants/claimants in the other two cases at the time of the accident were employed in the Thrissur Municipality Electricity Wing. The deceased Nelson was aged 38 and was drawing a monthly salary of ₹7895/- He was a lineman with the employer. His wife was examined as PW3 and the total compensation claimed was ₹17 lakhs.

5. The learned counsel for the appellants submitted that while computing the compensation, the Tribunal has not granted any amount towards future increase in the salary. The claimants are the widow, three minor children and mother of deceased Nelson. Therefore going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, $\frac{1}{4}$ alone can be deducted for the personal expenses of the deceased.

6. We have gone through the fixation of compensation by the Tribunal. ₹7895/- is taken as the monthly income. $\frac{2}{3}$ of the same is

taken as the multiplicand and multiplier of 16 is adopted. According to us, since the deceased was having a permanent employment in the Municipality, 50% of the monthly income will have to be added going by the judgment in **Sarla Varma's** case and by adding 50%, the income will be ₹11843/- and the multiplier will be 15. After deducting $\frac{1}{4}$ towards personal expenses, the amount will come to ₹ 15,98,805/- (11843 x 12 x 15 x $\frac{3}{4}$). No amount has been granted by the Tribunal for pain and suffering. The remaining heads of compensation granted by the Tribunal are :

Transport to hospital & medical expenses	₹ 2000/-
Funeral expenses	₹ 3000/-
Pain and suffering	₹10,000/-
Loss of consortium	₹15000/-
Loss of love and affection	₹15,000/-
Loss of estate	₹5,000/-

7. In the light of the decision of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)**, we will be justified in

granting ₹1,00,000/- towards loss of consortium and ₹1,00,000/- towards loss of love and affection. Apart from the same, ₹25,000/- each is awarded towards funeral expenses and loss of estate.

8. Accordingly, the award is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	1598805
Transport to hospital & medical expenses	2000
Funeral expenses	25000
Pain and suffering	10000
Loss of consortium	100000
Loss of love and affection	100000
Loss of estate	25000
Total	1860805
	Rounded off to 18,60,800/- (Rupees eighteen lakhs sixty thousand eight hundred only)

MACA No.522/2006

9. This appeal is from the award in O.P.(MV)No.3130/2000. There the injured was aged 37 at the time of the accident and was earning ₹11,000/- per month as Sub Engineer in Thrissur Municipality.

He sustained injuries to the head, lacerated wound legs and other bodily injuries. He was treated in the West Fort Hospital and in his evidence as PW1 he has stated that he was aged 42 years and was earning ₹7826/- per month as Line Assistant. The documents in support of his treatment are Exts.A23 to A30.

10. The learned counsel for the appellant submitted that the disability has not been considered properly and proper amounts have not been granted under various heads. He was treated as an impatient for a period of ten days from 5.9.2000 to 14.9.2000. Ext.A26 salary certificate showed that he was earning ₹7826/- per month. Exts.A27 and A28 showed the details of treatment and Ext.A29 series supported the medical expenses at ₹ 21895.36 Ext.A30 is the disability certificate which reported 9% permanent disability. The Tribunal has awarded ₹6,000/- towards loss of earnings and ₹23,000/- towards medical expenses including allied expenses like transport to hospital and bystanders expenses. We grant an amount of ₹2000/- for bystander expenses and ₹ 2000/- towards transport to hospital. The

Tribunal has granted ₹10,000/- towards pain and suffering, which we enhance to ₹25,000/-. For loss of amenities of life, ₹8,000/- has been granted. The appellant has suffered 9% permanent disability. This has to be considered in the light of the compensation claimed for permanent disability also. ₹7,000/- has been granted by the Tribunal towards permanent disability. Of course it is clear that he has not lost his job nor is finding it difficult to pursue his employment also. In that view of the matter, we will have to consider the fact that there is no loss of earning power. Therefore we will have to grant amounts towards permanent disability as well as for loss of amenities and enjoyment of life and shortened expectation of life. If the amount granted by the Tribunal is taken together, it will be ₹15,000/- under the head of loss of permanent disability as well as for loss of amenities. The major item will be the amount towards loss of enjoyment of life and amenities. Since admittedly there is disability of 9%, we enhance the amount of compensation by taking the two heads together to ₹50,000/- .

11. Accordingly, the appellant will be entitled to get

compensation as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Bystanders expenses	2000
Transport to hospital	2000
Pain and suffering	25000
Permanent disability, loss of amenities and enjoyment of life and shortened expectation of life	50000
Medical expenses	21895.36
Loss of earnings	6000
Total	106895.36 Rounded off to 1,06,895 (Rupees one lakh six thousand eight hundred ninety five only)

MACA No. 524/2006

12. This appeal is from the award in O.P.(MV)No.3132/2000. Paragraph 23 of the award discusses the details. He was aged 45 years at the time of the accident and was earning ₹10,000/- per month as an electrical worker. He sustained head injury. He was examined as PW6. He was treated in West Fort Hospital, Thrissur, Thrissur Metropolitan

Hospital and in Ganga Hospital, Thrissur. His evidence shows that he was aged 45 and is continuing the job. He has lost two teeth and he complained of his difficulty in chewing food and often pain and benumb in left hand as well as difficulty in taking weight. Exts.A37 to A47 as well as Exts.A61 to 63 are the documents in support of his claim.

13. Going by Ext.A37 wound certificate, he sustained two fractures, black eyes as well as other injuries. In the West Fort Hospital, Thrissur, he was treated from 5.9.2000 to 29.9.2000, except 23.9.2000. Ext.A38 series are the discharge summaries. In Ganga Hospital, Coimbatore he was treated as an inpatient from 23.4.2001 to 27.04.2001, which is supported by Exts.A39 discharge summary. The Tribunal awarded ₹13,000/- for loss of earnings, ₹70,000/- towards medical expenses including allied expenses like transport to hospital and bystanders expenses. ₹10,000/- was awarded by the Tribunal for pain suffering and ₹8,000/- was awarded for for loss of amenities. The Certificate- Ext.A45 showed 14% disability, which was reduced to

7% by the Tribunal. The annual income other than salary was taken by the Tribunal as ₹ 9,000/- and the multiplier of 16 was adopted and the compensation for permanent disability was calculated as ₹10,080/- .

14. As rightly pointed out by the learned counsel for the appellant, the multiplier method adopted by the Tribunal is not in a proper manner. We have noticed that herein the appellant has not lost his job and his earning capacity is not affected by the disability. But still the disability will have to be compensated by a suitable method. He will be having inconveniences and it will affect the amenities in life also. Apart from the same, in the light of the fact that he was treated as an inpatient for 53 days in the hospitals and he would have continued as an outpatient also for some more days. In that view of the matter, we award a sum of ₹35,000/- towards pain and suffering. Going by the method adopted by the Tribunal, the compensation awarded for permanent disability as well as loss of amenities together will be ₹18,080/-.

15. The learned counsel for the Insurance Company submitted

that there will not be any reduction in the salary due to the percentage of disability. In that view of the matter, we will be justified in awarding ₹40,000/- towards loss of amenities and enjoyment of life and an amount of ₹30,000/- for permanent disability.

16. Accordingly, the appellant will be entitled to compensation as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earnings	13000
Medical expenses including allied expenses like transport to hospital and bystanders expenses	72000
Pain and suffering	35000
Loss of amenities and enjoyment of life	40000
Permanent disability	30000
Total	190000 (Rupees one lakh ninety thousand only)

17. The appellants will be entitled to interest @ 9% per annum from the date of petition for the enhanced amount of compensation. 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 appeals are accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

sv.

P.V.ASHA, JUDGE