

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

MACA.No. 95 of 2012 ()

AGAINST THE AWARD IN OPMV 50/2007 of M.A.C.T., KOTTAYAM DATED 21-05-2011
APPELLANT(S)/PETITIONER

LEELAMONY
THAZHATHU, NEAR INDIA PRESS, MARIAPPALLY P.O.
KOTTAYAM - 686 023.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENT(S)/RESPONDENTS:

1. K.C.JOSE
KULAPARAMPAN (H), CHERIYA VAPPALLASSERY
NEDUMBASSERY P.O., ALUVA - 683585.

2. BIJU @ BIJU JOSEPH
KANNANKERIL, PALLICKACHIRA P.O., VALLONCHIRAKULAM
PAYIPPADU - 690556.

3. THE UNITED INDIA INSURANCE CO.LTD.,
KOTTAYAM - 686 001.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
R BY SRI.JOHN JOSEPH VETTIKAD

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

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

M.A.C.A.No.95 OF 2012

Dated this the 7th day of August, 2015

JUDGMENT

Jyothindranath, J.

This is an appeal filed by the claimant in O.P.(MV) No.50/2007 on the file of the Motor Accidents Claims Tribunal, Kottayam. The appeal is filed aggrieved by the quantum of compensation awarded by the Tribunal. Today, by a separate judgment in MACA Nos.93/2012 and 94/2012, the appeals which arose from the claim petitions moved by the same appellant along with her husband for compensation in the case of death of their children, were disposed of by us.

2. Now in this appeal, the submission of the learned counsel for the appellant is that the injured sustained very severe injuries including fracture of both bones of right leg and also there is type I compound fracture right leg, fracture of 2nd, 3rd and 4th ribs, fracture neck of scapula right. The procedures included casting and cardiothoracic

surgery. It is also the submission that she was an employee of Mahatma Gandhi University and was having a daily income of Rs.140/-. It is also the submission that a disability certificate was issued by the District Hospital, Kottayam which will show that the permanent disability was assessed as 12%. It is also the submission that due to the accident, she lost her children as well as sustained the above injuries. Apart from the same, the subsequent pregnancy was also aborted. It is the submission that Exts.A81 and A82 will prove the same. It is the further submission that the compensation awarded on various heads are insufficient and inadequate.

3. Learned counsel for the insurance company submitted before us that the appellant was only employed on daily wage basis. It is also submitted before us that the injuries were heeled and since injury was sustained in respect of a particular limb, the whole percentage of disability assessed by the Doctor need not be taken for assessment of compensation. Since it affected only a limb, it can be considered as a partial disability with respect to the whole body.

4. In this case, the appellant sustained very serious injuries including both bone fracture as well as rib fracture. There is also

indication that it resulted in permanent disability to the tune of 12%. The disability was assessed by the District Medical Board and there is nothing to suspect the assessment made by a competent medical board. Apart from this, she was a graduate and it can be further seen that she was, at that point of time, employed in Mahatma Gandhi University on a daily wage basis. In this regard, the submission of the learned counsel for the appellant is that her future prospects also should have been taken for the assessment purpose.

5. At this stage, learned counsel for the insurance company submitted before us that it being a temporary daily wages job, no future prospects need be taken into consideration while the monthly income is assessed for calculation purpose.

6. For fixing a just compensation, we adopt the monthly income at Rs.3,500/- and the appellant will be entitled for bystander's expenses for 60 days inpatient treatment.

Accordingly, the compensation is refixed in the following manner:

<i>Head of claim</i>	<i>Amount awarded</i>
Transport to hospital	3000
Damage to clothing	1500

<i>Head of claim</i>	<i>Amount awarded</i>
Extra nourishment	2500
Bystander's expenses	9000
Loss of earnings	3500 x 5 17500
Medical expenses	2186
Loss of amenities	35000
Pain and suffering	35000
Permanent disability	$3500 \times 12 \times 16 \times 12/100 = 80640$
Total	186326 (rounded off to 186300)

(Rupees One Lakh Eightysix thousand and three hundred only)

The enhanced amount of compensation will carry interest at the rate of 9% per annum from the date of filing of the petition and the insurance company is directed to deposit the entire amount of compensation, less the amount already deposited before the Tribunal, within a period of three months. On deposit, the appellant is entitled for release of the amount.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

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