

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 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

MACA.No. 104 of 2012 ()

**AGAINST THE AWARD IN OP(MV) 1348/2004 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL/ADDITIONAL DISTRICT JUDGE,THALASSERY DATED 23-12-2010
APPELLANT/PETITIONER:**

**N.K.SIRAJUDHEEN
S/O.MOIDU, AGED 29 YEARS, DRIVER CUM OIL MILL WORKER
INSHA MAHAL, P.O.ANJARAKANDY, KANNUR.**

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS/RESPONDENTS:

- 1. NATARAJAN
S/O.MARASWAMY, 4/61, PASUR
ANOOR MUTHALYAR COLONY, AVANTHADHI DESOM, P.O.PASUR
ANOOR (VIA)COIMBATORE - 641653 TAMIL NADU
(DRIVER OF LORRY TN 39 F 9039).**
 - 2. MALLIKA DEVI
2/130, SEGATHURAI, PALLADAM
KADAMBADI (P.O)
COIMBATORE DISTRICT - 641401(OWNER OF LORRY TN 39 F 9039).**
 - 3. M/S.NEW INDIA INSURANCE COMPANY LTD,
11, 19, 20 GOVERNMENT ARTS COLLEGE ROAD
COIMBATORE - 641602, TAMIL NADU (INSURER).**
- R3 BY ADV. SRI.A.C.DEVY
R BY SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.104 of 2012

Dated this the 21st day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant who was injured in an accident is aggrieved by the the inadequacy of the compensation. He was working as a driver cum oil mill worker. The accident occurred on 13.3.2004 at Varappuzha in Ernakulam district. The appellant along with another Shamsheer were travelling in a car bearing registration No.KL-13/K 7580. The offending vehicle a lorry hit the same and Shamsheer died and the appellant had sustained extensive injuries on his body and it is stated that he was bedridden for 2½ years.

2. The Tribunal has granted a total compensation of Rs.2,13,420/-, against which the present appeal is filed.

3. We heard the learned counsel on both sides.

4. Before the Tribunal it was claimed that he was initially admitted in the Amrita Institute of Medical

Sciences, Ernakulam and he was treated as inpatient there till 2.4.2004 and thereafter he was admitted in the Medical College Hospital, Pariyaram. The injuries sustained by him are the following:

1. Multiple fracture right hip
2. compound fracture in pelvis region
3. fracture bi-column of acetabulum right side
4. comminuted fracture pelvis of acetabular roof involving anterior and posterior pillar
5. bony chips in the right para-rectal region
6. displacements of fragments posteriorly
7. linear undisplaced fracture of right interior public ramus
8. right hip joint space increased

5. The final diagnosis as per Ext.A9 is "Bi-column fracture right acetabular fracture right side". He had underwent open reduction and internal fixation on 20.3.2004. Ext.A13 is the next discharge card issued from the Medical College Hospital, Pariyaram where he had underwent treatment and ORIF with reconstruction plate was conducted on 20.3.2004. He has produced Ext.A17 series medical bills and Ext.A15 series showing the transportation expenses. The disability certificate issued from the Medical Board of the General Hospital, Thalassery

has assessed his permanent disability as 19% (whole body). The Tribunal, for the purpose of assessment of compensation has adopted the monthly income at Rs.3,000/-.

6. Heard both sides on various aspects.

7. According to us, being an oil mill worker he would have been earning easily an amount of Rs.4,500/- during the year 2004 and we adopt the same. He was aged 23 and therefore the multiplier will be 17. It is clear that he had undergone several surgeries and the Tribunal has granted an amount of Rs.15,000/- alone as compensation for pain and suffering and no amount has been granted towards loss of amenities.

8. We are of the view that he is entitled to be granted more amount towards pain and suffering as he was treated in different hospitals and he would have continued with his treatment going by the evidence adduced. Of course after the initial period of inpatient treatment subsequent treatments have been continued as outpatient

and then as an inpatient. Therefore, we fix an amount of Rs.40,000/- towards pain and suffering. He has an implant in his body namely pursuant to the surgery done on 20.3.2004 and thereafter it was reconstructed. Therefore, for future medical expenses also we grant an amount of Rs.20,000/- and also we grant an amount of Rs.35,000/- towards loss of enjoyment and amenities in life. The compensation is therefore re-fixed in the following manner:

Head of claim	Amount re-fixed Rs.
Loss of earning	4500x4 18000
Bystander's expenses	20x200 4000
Pain and suffering	40000
Treatment expenses	60000
Extra nourishment	2000
Transportation expenses	3140
Permanent disability	174420
Loss of amenities and enjoyment	35000
Future medical expenses	20000
Total	356560
	Rounded off to Rs.3,56,600/- (Rupees three lakhs fifty six thousand six hundred only)

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

10. The Insurance Company has already been found liable by the Tribunal, which we confirm.

11. There will be a direction to the 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 such deposit being made, 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

shg/