

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

MACA.No. 169 of 2012 ()

AGAINST THE AWARD IN OPMV 739/2010 of M.A.C.T. TIRUR

APPELLANT/PETITIONER

SHANIL
S/O. SHANMUGHAN, RESIDING AT MENAKATH HOSUE
P.O. PONNANI, EZHUVATHIRUTHY, MALAPPURAM DISTRICT

BY ADVS.SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU
SRI.A.R.NIMOD

RESPONDENTS/RESPONDENTS:

1. ABOOBACKER M.P.
S/O. UMMER, RESIDING AT MADATHIL PARAMBIL HOSUE
AYILAKKAD P.O. EDAPPAL, MALAPPURAM 679576

2. GIRIJAN, S/O. KRISHNAN, RESIDING AT VALIYAPARAMBIL
HOUSE,
P.O. KANHIRAMUKKU, PALAKKAD 679584

3. THE NEW INDIA ASSURANCE COMPANY LIMITED
BRANCH OFFICE, THARIFF BAZAR, OPPOSITE TOWN HALL
TIRUR, MALAPPURAM 676101

R3 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.169 OF 2012

Dated this the 23rd day of July, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV)No.739/2010 on the file of the Motor Accidents Claims Tribunal, Tirur. The quantum of compensation awarded is under challenge. The facts are as follows :

While the appellant was riding the motor bike bearing Reg.No.KL-54A/7493, a car bearing Reg.No.KL-54/7387 came from the opposite side and hit against the motor cycle and in that accident, the appellant sustained severe injuries. A claim petition moved before the Tribunal. The Tribunal only awarded a sum of ₹1,20,600/- against a total claim of ₹3,61,000/-.

2. We heard the learned counsel on both sides.

3. The learned counsel for the appellant submitted before us that even though it was a case of fracture of shaft of right femur involving fracture of styloid process of right femur and medial

malleolus, the Tribunal awarded only a total compensation of ₹ 1,20,600/-, out of which ₹82,186/- is towards medical reimbursement. It is the further submission before us that the injured was a tailor by profession and was aged only 25 years. It is the further submission that the appellant was treated as inpatient on two occasions and was treated with ORIF. It is an indication that future treatment will also be necessary for removal of the internal fixator. It is further submitted that no amount is granted towards future treatment expenses. It is also submitted before us that the income of the appellant is taken as only ₹3,500/- even though the accident occurred in the year 2010 and injured is a tailor.

4. The learned counsel appearing for the Insurance Company submitted before us that the Tribunal awarded just compensation considering all aspects including nature of injury, treatment period and other details available from the records produced.

5. Surely no positive evidence was produced before the Tribunal to show his income or occupation. But still considering the fact that the accident occurred in the year 2010 and further keeping in

mind that even a casual worker will be having a monthly income of more than ₹4,000/-, it will be only just and proper to take ₹4,000/- as the monthly income for calculation of loss of income during the treatment period as well as loss of income in future due to disability. In this case, the learned counsel for the appellant produced a disability certificate for our perusal. It shows that the appellant sustained disability of about 13%. Surely, the said document is not marked before the Tribunal. But at the same time, it is pertinent to note that an application is filed along with this appeal to assess the disability by a Medical Board. An application for the said purpose is not seen filed before the Tribunal. There are to fractures. Considering the nature of the injury, we will be justified in adopting 10% as the functional disability for assessment purpose; especially considering the alleged occupation of the injured. From the medical records, it can be seen that internal fixator is there and it has to be removed.

6. Thus, the just compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earnings	20000 (4000 x 5)
Medical expenses	82186
Bystander's expenses	6000 (20 x 300)
Transportation	3000
Extra nourishment	3000
Pain and suffering	30000
Permanent disability	86400 (4000 x 12 x 18 x 10%)
Loss of amenities	25000
Future treatment expenses	15000
Total	270586 Rounded off to ₹ 2,70,600/- (Rupees two lakhs seventy thousand six hundred only)

7. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited before the Tribunal within three months and on deposit the appellant will be entitled for release of the amount.

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

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.