

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

MACA.No. 301 of 2012 ()

AGAINST THE AWARD IN OPMV 1538/2001 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED 01-08-2006

APPELLANT/PETITIONER:

K.P.ANTONY
S/O.PETER, KOLARIKKAL HOUSE, NEAR TELEPHONE EXCHANGE
SOUTH CHITTOOR, KOCHI-682027.

BY ADVS.SRI.K.JANARDHANAN
SRI.K.J.MANU RAJ

RESPONDENTS/RESPONDENTS:

1. THE TRANSPORT OFFICER, H.M.T. LTD.
H.M.T.P.O, KALAMASSERY, PIN-683104.

2. M.V.JOSEPH,
S/O.VARKEY, NEDUMAMCHALIL HOUSE, NJALAKAM KARA
THRIKKAKARA NORTH VILLAGE, ERNAKULAM DISTRICT
PIN-682038.

3. THE UNITED INDIA INSURANCE CO.LTD,
THARAKAN'S BUILDING, RAJAGIRI ROAD, KALAMASSERY-683104
ERNAKULAM DISTRICT.

R3 BY ADV. SMT.RAJI T.BHASKAR
R3 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A No. 301 of 2012

Dated this the 20th day of February 2015

JUDGMENT

Ramachandran Nair , J.,

The injured is the appellant. He sustained injuries in an accident which occurred on 27.3.2001 at about 5.40 p.m. He was travelling in a bus through the Cheranellor-Chittoor public road and near the Edayakunnam Panchayat Office, the bus hit an electric post and the appellant sustained serious injuries. The total amount claimed is Rs. Two lakhs.

2. The learned counsel for the appellant submitted that the appellant had suffered comminuted fracture lower 1/3 left humerus, comminuted fracture cerocoid process left ulna, open reduction and plate fixation and bone grafting of left humerus was done.

3. He was having a total pay of Rs. 9,600/- as salary per month. Even though the certificate showing permanent disability of 20% was marked in evidence, no amount has been granted by the Tribunal. Learned counsel submitted that he had

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undergone inpatient treatment for a period of 21 days. But for pain and suffering only Rs. 15,000/- has been granted.

4. We have gone through Ext.A7 certificate issued by the Medical Board. Learned counsel for the Insurance Company submitted that nobody has been examined to prove the same. We are of the view that the Medical Board of the General Hospital had issued the certificate, and there was no challenge against the disability, the same can be accepted. The Tribunal did not grant any amount for earning capacity, since it was of the view that there was no loss of earning capacity. We are of the view that permanent disability has been sustained by him and the same will have to be compensated going by the principles settled by the Apex Court in various decisions. He was aged 54 at the time of the accident. The multiplier adopted is 11. The basic pay of the appellant is reckoned as Rs.5,300/- and for calculating permanent disability, we take it as Rs.5,000/-. Then the disability compensation will be $\text{Rs.}5,000 \times 12 \times 11 \times 20 / 100 = \text{Rs.}1,32,000/-$. For pain and suffering we also grant an additional amount of Rs.10,000/-. Accordingly we modify the award as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amt. Awarded</i>	<i>Amt.modified</i>
1	Transport to hospital	500	500

<i>Sl.No.</i>	<i>Heads</i>	<i>Amt. Awarded</i>	<i>Amt.modified</i>
2	Extra nourishment	2200	2200
3	Bystander's expenses	2200	2200
4	Loss of earning (15,105+817+202)	16124	16124
5	Pain and sufferings	15000	25000
6	Loss of amenities	25000	25000
7	Compensation for permanent disability		132000 (Rs.5,000x12x11x20/100)
	TOTAL		2,03024

4. Thus the appellant will be entitled to a total compensation of Rs.2,03,024/- which will carry interest at the rate of 9% p.a in the light of the judgment of the Apex Court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513]. The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment.

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

Sd/-
T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

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:4:

True copy

P.A to Judge