

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 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

MACA.No. 419 of 2012 ()

AGAINST THE AWARD IN OPMV 1079/2006 ON THE FILE OF THE ADDITIONAL
MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 22-12-2010

APPELLANT/APPELLANT:

M. PADMANABHAN UNNI

AGED 70 YEARS, S/O.KRISHNAN NAMBOODIRI, MANGALASSERY
ARAKINAR P.O., KOZHIKODE DISTRICT 28.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS:

1. E. BASHEER

RESIDING AT EDATHIL HOUSE, P.O.ORAVI, NADUVANNUR
KOZHIKODE - 673 601.

2. THE BRANCH MANAGER

NATIONAL INSURANCE CO.LTD., NOOR COMPLEX, MAVOOR ROAD
KOZHIKODE - 673004.

R2 BY ADV. SRI.P.JAYASANKAR

R BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A No.419 of 2012

Dated this the 13th day of January 2015

JUDGMENT

Ramachandran Nair , J.,

This is a case of personal injury and the claimant/injured is the appellant herein. He was aged 65 years at the time of the accident. He was travelling in a car bearing Registration No. MH 04/AP-7359 from Valancherry to Calicut and at a place called Kundayithode a bus bearing registration number KL-11/R-3789 which came in the opposite direction hit against the car. He sustained serious injuries and was admitted to the Medical College Hospital, Kozhikode. From there he was taken to Baby Memorial Hospital, Kozhikode on the same day. He was treated as inpatient till 3.1.2006. Surgeries were undertaken on 12.12.2005, 15.12.2005, 17.12.2005 and on 20.12.2005. It is submitted that there was delayed union of right femur supracondylar fracture with various deformities and he was readmitted in this hospital from 14.8.2006 to 21.8.2006.

Thereafter, he was admitted on 11.9.2006 to 28.9.2006 in R.V.Clinic and Hospital and R.V. Institute of Research in Ilizarov Technology Orthopaedic Super Speciality Centre, Palakkad and he underwent surgery on 15.9.2006. He was again readmitted in the hospital on 20.10.2006 and continued up to 19.11.2006. Lastly, he was readmitted in 26.12.2006 and was discharged on 29.12.2006. Thereafter outpatient treatment was continues for long.

2. It is claimed that he was working as show room Manager and the disability assessed is 23% going by Ext.C1 certificate.

3. Learned counsel for the appellant submitted that the compensation granted for permanent disability, pain and suffering, transportation, bystander's expenses and for loss of earning is inadequate. It is also submitted that the percentage of disability will show that there will be loss of amenities and loss of enjoyment of life, but no amount has been granted.

4. The injuries sustained are follows:

*"Small contusion left frontal sub arachnoid hemorrhage,
fracture right zygomatic arch, Fracture 5th rib right, Monteggia*

fracture dislocation right, Fracture distal radius left, Pubic symphysis diastasis and Fracture acetabulum right, Comminuted supracondylar frac right femur, Tibial spine avulsion fracture right and lacerated wounds".

5. The documentary evidence available are Exts.A1 to A6 as well as Ext.C1 disability certificate.

6. He was aged 65 at the time of the accident and on the ground that no evidence was adduced to prove employment and income, the Tribunal fixed a notional income of Rs. 2,000/-. The multiplier adopted was 7 but going by the decision reported in ***Sarala Varma v. Delhi Transport Corporation [2010 (2) KLT 802]***, the correct multiplier will be 5.

7. We are of the view that even though, there was no evidence regarding employment and the income, claimed at Rs.4300/- for assessing the compensation, the Tribunal can fix a notional income. The accident is of the year 2005 and therefore, we take an amount of Rs. 3,000/- as notional income.

8. The evidence will show that he was treated in four different hospitals, spreading over to one year. For transportation to hospitals, as against the claim of Rs. 5,000/-,

the tribunal has granted only Rs. 1,000/-. The claim at the rate of Rs. 5,000/- is reasonable and we grant the same. Similarly, for extra nourishment, Rs. 5,000/- was claimed, the tribunal has granted only Rs. 1,000/- which is not justified. In the light of the prolonged treatment, we grant the total amount claimed. For loss of earnings, due amount will have to be granted. The evidence show that he was practically under treatment for a period of one year. Therefore, partial loss of earnings is granted at the rate of Rs. 3,000/- for 12 months, i.e. Rs. 36,000/-. As far as bystander's expense is concerned, for a total number of 41 days, the tribunal has granted Rs. 100/- per day. We enhance it as Rs. 200/- per day i.e. Rs. 8,200/-. For treatment expenses, Rs. 1,61, 597/- has been granted.

9. For pain and suffering , the claim is Rs. Two lakh. But the Tribunal has granted only Rs.12,000/-. He sustained very serious injuries including fractures. The appellant was subjected to surgeries on five occasions and he was under continuous treatment. In that view of the matter, the amount awarded under the head pain and suffering is too low. We are of the view that it will be reasonable to award an amount of Rs. 50,000/-

towards pain and suffering. The appellant being aged 65, and since there is no evidence regarding the employment, the item of functional disability will not be a factor as far as this case is concerned. Since he has sustained 23% permanent disability, the disability factor will have to be assessed for granting compensation by taking the notional income. Apart from the same, he will be entitled for due compensation for loss of amenities and for loss of enjoyment of life. The disability compensation will be Rs. 41,400/- taking the multiplier as 5. The disability certificate shows that there is lower limb deformity and shortening of one inch of right lower limb. In that view of the matter, he will have to bear the disability for the remaining part of life and we award an amount of Rs. 50,000/- towards loss of amenities and loss of enjoyment of life. Rs. 1,61,597/- has been awarded by the Tribunal for medical expenses, which we confirm.

10. Thus the total compensation will be Rs. 3,57, 197/- which is rounded off to Rs. 3,57,200/- .

11. The Tribunal has granted interest only at the rate of 7% 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], we fix the interest at the rate of 9% p.a from the date of petition.

12. 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. No cost.

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**P.V.ASHA
(JUDGE)**

AL/-