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 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

MACA.No. 996 of 2005 ( )

AGAINST THE AWARD IN OPMV 1221/1998 of MACT, IRINJALAKUDA DATED 07-01-2005

APPELLANT/PETITIONER::

ANTO. A.M., S/O. MATHUNNI,
ANGAMALY HOUSE, PERAMBRA P.O., MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS:
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1. AUTO BODY (BOMBAY) PVT.LTD.,
T-168 M.I.D.C., BHOSARI, PUNE-411 026.

2. HARIDAS SUBHANRAO SARATE,
NADIWADI, TAL NILANGA DISTRICT
LATUR. (R2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER/APPELLANT AS PER ORDER DATED 16/06/2014 IN IA 1566/2014)

3. MANAGER, ORIENTAL INSURANCE CO.LTD.,
40/25, BHONDE COLONY, OPPOALURKAR
MUSIC HOUSE, KARVE ROAD, PUNE-411 004.

4. GANESH GODHAJI GAWADE,
KAREGAON
TAL SHIRUR. (R4 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER/APPELLANT AS PER ORDER DATED 16/06/2014 IN IA 1566/2014)

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW
R3 BY ADV. SMT.PREETHY R. NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.996 OF 2005

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Dated this the 21st day of May, 2015

JUDGMENT

Ramachandran Nair, J.

In an accident which occurred on 15.7.1997 at Pune, serious injuries were caused to the appellant and he filed an application seeking payment of compensation to the tune of ₹ 5 lakhs. The Tribunal below has allowed the appellant to realise a sum of ₹ 2,82,148/- with interest @ 6% per annum from the date of filing of the petition. The appellant is mainly aggrieved by the quantum of compensation fixed by the Tribunal.

2. The accident occurred on Nagar-Pune road while he was travelling in the vehicle bearing Reg.No.MH 26/C 1083. The offending vehicle is a Stage carriage bus bearing Reg.No.MH 12/Q 822, which was driven by the second respondent herein. It dashed against the vehicle in which the appellant was travelling. He was immediately taken to the hospital at Pune itself and was treated as

inpatient for a period of 31 days.

3. It was claimed that the appellant was a qualified Engineer holding a Diploma in Electrical Engineering. He was an Electrical Contractor with Appolo Tyres and the monthly income claimed is ₹6,000/- and the Tribunal below fixed it at ₹3,000/- and the multiplier adopted is 17, whereas going by the age of the appellant, namely 25, and as per the decision in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, it will be 18. The learned counsel for the appellant further submits that the amount awarded towards permanent disability do not reflect the correct picture. According to the learned counsel, the disability certificates issued together will show that the disability is 31% which include orthopaedic disability as well as the disability caused to the vision to the left eye. But the Tribunal has fixed it only at 25%. Further, amounts have been claimed towards expenses for bystander, permanent disability and loss of amenities in life.

4. The learned counsel for the Insurance Company while opposing the contentions of the learned counsel for the appellant

submits that actually there is no documentary evidence to show the personal income of the appellant. Even though the learned counsel for the appellant placed reliance on the income tax return, it is submitted by the learned counsel for the Insurance Company that it was only in respect of the firm of which the appellant was a partner.

5. We have considered the rival submissions. In the light of the finding with regard to the negligence and the liability of the driver which is not under challenge by any of the respondents, we are only adjudicating the claim for enhancement of compensation.

6. First we will refer to the disability certificates produced. Those have been proved through PW1, the doctor and in Ext.A1 the orthopaedic disability is shown as 21%. Ext.A22 is the certificate showing the disability to the left eye which is 10%. After considering both orthopaedic and ophthalmic disability, the learned Tribunal assessed the total disability as 25%. Even though the learned counsel for the appellant tried to persuade us to accept the total percentage by reckoning both certificates at 31%, as rightly pointed out by the learned counsel for the Insurance Company, the assessment made by the

Tribunal cannot be said to be faulty.

7. We have gone through the certificates also. Orthopaedic disability is mainly to the shoulder right 15% and shoulder left 6%. He had sustained head injury namely to the skull and there was nasal bleeding when he was admitted in the hospital. Going by the said certificate, fractures noted are fracture (Rt.) scapula, fracture mandible bilateral, fracture (u) scapula, fracture of frontal bones, fracture (u) orbit. Various details have been shown in the certificate with respect to the treatment procedures undertaken by him.

8. As regards the period of treatment and expenses, there is no dispute. He was treated as an inpatient for a period of 31 days. We find from the award that the Tribunal has granted an amount of ₹ 3,100/- towards extra nourishment and attendant's charges. He would have been entitled to attendant's charges separately by reckoning a reasonable amount. We fix the amount towards attendant's charges at ₹3,500/- and extra nourishment at ₹3,000/-. As far as the expenses for transportation to hospital, ₹2,000/- has been awarded by the Tribunal, which is adequate.

9. The appellant being of the age group 25, the multiplier as we have already noted is 18. In the light of the fact that he was having qualification both in mechanical and electrical disciplines which is proved by Ext.A18 National Trade Certificate issued by the Government of India, Ext.A19 certificate issued from the Luna Institute of Engineering Technology, Irinjalakkuda coupled with Ext.A20 certificate issued from the Apollo Tyres Ltd., it will be proper to fix the monthly income at ₹4,000/-. The compensation towards permanent disability will be ₹ 2,16,000/- (4000 x 12 x 18 x 25%).

10. The Tribunal has granted partial loss of earnings for a period of six months. At the rate of ₹4,000/-, it will be ₹24,000/-, instead of ₹18,000/- already granted by the Tribunal. We also enhance the compensation towards pain and suffering from ₹20,000/- to ₹30,000/- considering the seriousness of the injuries and the period of treatment. Lastly, it was contended that the amount awarded towards loss of amenities and happiness in life is also totally inadequate. The permanent disability suffered by him will result in denying to an extent the amenities and enjoyment in life and we fix the the compensation

under this head at ₹20,000/-.

11. Accordingly, we refix the compensation as shown below :

Head of claim	***Amount Awarded in rupees***
Loss of earnings	24000
Extra nourishment	3000
Attendant's expenses	3500
Transport to hospital	2000
Medical expenses	76048
Pain and suffering	30000
Loss of amenities	20000
Permanent disability	216000
Total	374548 Rounded off to ₹3,74,550/- (Rupees three lakhs seventy four thousand five hundred fifty only)

12. The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company will deposit the amount within a period of three months, less the amount already deposited, before the Tribunal and we permit the claimant to withdraw

the amount.

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

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

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