

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

MACA.No. 1022 of 2006 ()

AGAINST THE AWARD IN OPMV 258/2002 ON THE FILES OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED 08-11-2005

APPELLANT/PETITIONER::

SAMAD (MINOR)
AGED 13, (DATE OF BIRTH 23/08/88
REPRESENTED BY HIS FATHER AND NEXT FRIEND
ABDUL RAHIMAN, CHOORAKOTTAYIL HOUSE, VATTEKUNNAM
EDAPPALLY P.O.

BY ADV. SRI.S.RAJEEV

RESPONDENTS/RESPONDENTS:

1. LEELAMMA RAJU, W/O. RAJU,
THOTTUMKARA HOUSE, SOUTH PARAVOOR, POOTHOTTA P.O.

2. THE UNITED INDIA INSURANCE CO.LTD.,
THE MOTOR 3RD PARTY CLAIMS OFFICE
VETTUKATIL BUILDING, JOSE JUNCTION, ERNAKULAM
KOCHI-16.

R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

**C.K.ABDUL REHIM &
MARY JOSEPH, JJ.**

M.A.C.A.No.1022 of 2006

Dated this the 2nd day of December, 2015

JUDGMENT

C.K.Abdul Rehim J.

In this Motor Accident Claims Appeal the appellant, who is the claimant before the Tribunal, is seeking enhancement of the compensation awarded in O.P.(M.V) No.258/2006 by the Tribunal. The accident occurred when the appellant was a minor boy aged 13 years, on 20.7.2001, when a Bus hit on him at a pubic road. The appellant sustained extensive laceration on his left thigh along with skin avulsion and degloving of lower third of left leg (left foot) along with fracture of neck of left Humerus, left Femur, both bones on the lower part of left leg and Calcaneum. He was treated as inpatient for about two months and thereafter underwent intermittent consultations and various surgical operations. The injuries sustained to the appellant had resulted in permanent partial disability, the extent of which was assessed by the Medical Board in Ext.A12 certificate as 19%. The Tribunal awarded a total compensation of Rs. 1,47,0000/- with interest at 7.5% per annum. It is being unsatisfied with the quantum of compensation awarded, the above appeal is filed.

2. Contentions of the appellant is mainly that, the method of computation adopted by the Tribunal in granting compensation for disability is not legal, correct and justifiable. The Tribunal had adopted the notional annual income for the appellant at Rs.15,000/- and the multiplier of 15. Compensation for 19% disability was worked out to Rs.42,750/- on that basis. Along with the said amount, compensation of Rs.20,000/- for pain and suffering and Rs.3,000/- for loss of one academic year was granted. Apart from the said amounts, medical expenses, expenses for bystander, extra nourishment and transportation was also awarded. It is contended that the method adopted by accepting notional annual income at Rs.15,000/- is totally unconscionable and unacceptable.

3. Learned counsel appearing for the appellant had placed reliance on a decision of the Hon'ble Supreme Court in **Mallikarjun v.Divisional Manager, National Insurance Company Limited and Another [(2014) 14 SCC 396]**. The apex Court held that, while considering the claim of a victim child, it would be unfair and improper to follow the structured formula as provided in the II Schedule of the Act. For children there is no income. The indications in the II Schedule for adopting notional income of Rs.15,000/- per year for non-earning persons cannot be followed in the case of child victims. It is observed that, a child cannot be equated to such a non-earning person. The compensation need to be worked out under the non-pecuniary heads, in addition to the actual amounts incurred for treatment done and/or to be done,

transportation, assistance of attendant, etc. The main elements of damages in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle, which will offset to some extent the inconveniences or discomforts arising out of the disability. The appropriate compensation for disability should take care of all the non-pecuniary damages. It is found that, in other words, apart from this head there shall only be the claim for the actual expenditure for treatment, attendant, transportation etc.

4. The apex Court in the above said decision had prescribed the guidelines. It is held that though it is difficult to have an accurate assessment of the compensation in the case of children suffering from disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant etc. should be, if the disability is above 10% and up to 30% to the whole body, is Rs.3 lakhs.

5. In the case at hand, Ext.A12 certificate of disability which is accepted by the Tribunal would indicate that the appellant had sustained partial permanent disability to the extent of 19%. Hence on applying the guidelines stipulated in **Mallikarjun's case** (supra), the amount of compensation to be fixed for the non-pecuniary damages is Rs.3 lakhs.

6. Learned counsel for the appellant had placed reliance on a

subsequent decision of the Hon'ble Supreme Court in **Kumari Kiran v. Sajjan Singh & Others [(2015) 1 SCC 539]**. It is evident that, after following the dictum contained in **Mallikarjun's** case, the Hon'ble apex Court had allowed a further sum of Rs.1 lakh towards pain and sufferings, over and above the compensation calculated on the principles of **Mallikarjun's** case (supra). We do not find that any dictum has been laid in **Kumari Kiran's** case to the extent that, compensation under the non-pecuniary head of pain and suffering should be awarded over and above the amount of compensation for disability. Therefore, we are not persuaded to follow the method of computation adopted by the Hon'ble Supreme Court in **Kumari Kiran's case**. Adopting the principles contained in **Mallikarjun's case** (supra) we are inclined to enhance the compensation of Rs.42,750/-, Rs.20,000/- and Rs.3,000/- awarded by the Tribunal under the heads of permanent disability, pain and suffering and loss of academic year, to Rs. 3 lakhs.

7. Learned counsel for the appellant contended that, the amount of Rs.5,000/- awarded under the heads of extra nourishment and expenses for bystander, is too inadequate. Evidently the appellant had undergone treatment as inpatient for about two months and continued treatment thereafter for quite a long period. The appellant had produced the photographs of his left leg, which had suffered degloving injury along with the fracture, for the perusal of this court. It is evident that the appellant had suffered severe disfiguration on his left foot and the wound on the inner portion of the heel continues to be ulcerous even now.

Considering those aspects we are inclined to enhance the compensation under the head extra nourishment and expenses for bystander as Rs.15,000/- which will entitle the appellant to have an additional amount of Rs.10,000/-. The award of Rs.2,000/- granted under the head of transportation is also enhanced to Rs.5,000/- which will entitled to another sum of Rs.3,000/-. Considering the fact that the appellant is continuing treatment even at this point of time, we are inclined to award a sum of Rs.20,000/- for expenses towards future treatment.

8. Under the above mentioned circumstances, the impugned award is modified by refixing the total compensation at Rs.4,04,250/-, thereby enhancing the compensation by a sum of Rs.2,57,250/-. The said amount will carry interest at the rate of 9% p.a from the date of compensation till payment.

9. The 2nd respondent is directed to make deposits of the amount of compensation as modified in this appeal, less the amount if any already paid, within a period of two months from the date of receipt of a copy of this judgment.

The appeal is allowed to the extent as above. The parties will bear their respective costs.

Sd/-
C.K.Abdul Rehim, Judge

Sd/-
Mary Joseph, Judge

al/-