IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

MACA.No. 721 of 2012 ()

AGAINST THE AWARD IN OPMV 710/2010 of M.A.C.T.,KOZHIKODE DATED 31-08-2011

APPELLANT(S)/3RD RESPONDENT IN THE OP:

THE ORIENTAL INSURANCE CO. LTD.
MANJERI
REPRESENTED BY THE ASSISTANT MANAGER
& AUTHORISED SIGNATORY
THE ORIENTAL INSURANCE CO.LTD, REGIONAL OFFICE
ERNAKULAM, METRO PALACE, ERNAKULAMNORTH
KOCHI-18.

BY ADV. SRI.A.R.GEORGE

RESPONDENT(S)/CLAIMANT IN THE OP:

SWAPNA SETHU
W/O.SIVAPRASAD, RESIDING AT SIVADAM, PANNIYANKARA.P.O
THIRUVANNOOR NADA, PANNIYANKARA AMSOM DESOM, KOZHIKODE
PIN-678683.

R1 BY ADV. SRI.A.V.M.SALAHUDDEEN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 16/1/2015, ALONG WITH CO. 3/2013, THE COURT ON 19/3/2015 DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.
- -
M.A.C.A.No.721 of 2012 & C.O.No.3/2013
- -
Dated this the 19th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This is an appeal by the insurance company wherein the only question is with respect to the quantum of compensation awarded by the Tribunal.

2. The sole respondent herein is the claimant before the Tribunal. She was seriously injured in an accident which occurred on 25.8.2009 at about 9.45 a.m. She was travelling in bus bearing Reg. No.KL-10-M-6829 from Feroke Koya's Hospital to MIMS Hospital and when the bus reached at Thiruvannur, it collided with another bus bearing Reg. No.KL-08-AF 5868. As far as the respondent herein is concerned, the accident caused dislocation on T12 vertebra with traumatic paraplegia. In total the claimant claimed an amount of Rs.50 lakhs as compensation and the Tribunal, by the impugned award, allowed her to recover an

amount of Rs.43,21,345/0 with interest at the rate of 7% per annum from 6.5.2010.

3. Learned counsel for the insurance company, Shri A.R. George raised the following contentions: The respondent is a teacher in Kendriya Vidyalaya No.1, East Hill, Kozhikode. The Tribunal assessed compensation on the premise that she had lost her job and is unable to work. It is submitted that actually she is working still in the same school as evident from Annexure A2 letter issued by the Principal of the school. The above letter was furnished to the Senior Divisional Manager of the insurance company, on a request made under the Right to Information Act. Therein, the details sought were the leave taken by her on medical grounds like earned leave, half pay leave and extra ordinary leave. She had availed leave on loss of pay from 2.10.2009 to 16.6.2011. It is also answered in Annexure A2 that she is still working as a teacher and is drawing an amount of Rs.28,737/- per month at present. It is therefore submitted that there is no loss of earning power and hence the compensation granted by taking the monthly salary at the relevant time and then adopting the multiplier of 17, cannot be

justified.

4. Annexures A1 and A2 have been produced along with I.A. NO.228/2013. In the counter affidavit filed by the respondent in the I.A., it is explained that she had sustained 90% disability due to the accident. She is attending her office (school) with much difficulty and pain. She cannot lead her life as a normal person and has lost her enjoyment in life totally. She needs the help of a bystander always to move about and is not able to lead a normal family life with her husband. She has no children and cannot expect the same in future and cannot say at present, that she can continue her service in future. Therefore, the compensation granted for continuing permanent disability is not bad in law.

5. Learned counsel for the respondent Shri A.V.M. Salahudeen explained that there is no dispute on the part of the appellant with regard to the permanent disability sustained at 90% which was assessed by the Tribunal from Ext.C1 certificate issued by the Medical Board. Both her lower limbs are affected by paraplegia. She is being carried to the school, actually as she cannot walk. The arrangement is

pursuant to the gesture made by the school authorities and she will have to depend upon others for going to the school and to come back. It is therefore submitted that the compensation granted towards permanent disability is justified.

6. We will now come to the details of treatment and other factors relevant. The respondent had sustained burst fracture D12 vertebra with subluxation (traumatic paraplegia). Ext.A2 is the copy of the wound certificate and MRI scan was also taken for further investigation. She was admitted in the hospital on 25.8.2009 and discharged on 15.9.2009. Thereafter she was treated in Christian Medical College Hospital, Velloor and Ext.A3 is the copy of the discharge summary. She was admitted there on 28.3.2011 and discharged on 10.6.2011. The history recorded therein shows that immediately after the accident she was not able to move both lower limbs, had loss of sensation in both lower limbs. Initially she was taken to a local hospital (MIMS Hospital) where imaging showed T12 comminuted fracture with facetal dislocation. She underwent surgical stabilization of spine using steffi pedicle system from T11 to L1. There

was no post-op improvement in the motor status. She was initiated on physiotherapy, where she was given lower limb calipers to stand and later on trained to walk small distances with walker. The examination details are given thereafter. It is evident from the said certificate that she was admitted for rehabilitation. We extract the following details from the heading "discussion":

> "31 years, Mrs. Swapna, Traumatic spastic paraplegia was admitted for rehabilitation. At admission she was on indwelling urethral catheter. She was walking in parallel bar with left sided AFO (Ankle foot orthosis) and right sided KAFO (knee ankle foot orthosis). She was partially dependent for her ADL activities. Goals at admission were Maximizing ADLs, ambulation with minimal aids and management of neurogenic bladder and bowel.
>
> In physiotherapy she was trained given strengthening program for bilateral upper limb. She was continued on bilateral lower limb range of motion exercises. On detailed evaluation it was noticed that as did not have any knee voluntary control the AFO on one side was not able to control the buckling. Hence she was given bilateral KAFOs. Initially she was made to stand in parallel bar on later date. She was started on gait training in

parallel bar then in walker. Subsequently she was able to walk with bilateral elbow crutch.

In occupational therapy she received therapy to improve her ADIs."

7. Now we will come to paragraph 10 of the award showing quantification of salary per month. The respondent was aged 31 at the time of accident and was earning Rs.24,430/- per month. Ext.A4 is the certificate showing the details of salary. The total emoluments was Rs.25,231/- which included pay at Rs.11,010/-, grade pay Rs.4,200/-, DA Rs.4107/-, HRA Rs.3,042/-, Transport Allowance Rs.1,016/- and NPS (MS0 Rs.1,856/-. The Tribunal deducted Transport Allowances and NPS (MS) from the total salary for fixing the gross salary at Rs.22,359/- per month and annually it was fixed at Rs.2,68,308/-. Ext.A5 is the copy of the income tax return submitted on 27.7.2010 wherein the tax and interest payable is shown as Rs.8,233/-. After deducting income tax component the total net salary yearly will come to Rs.2,60,075/-. An amount of Rs.2500/- has been deducted towards profession tax payable and finally the yearly multiplicand was taken as

Rs.2,57,575/- and by reckoning the age as 31, the multiplier arrived at is 17. The Tribunal further awarded compensation for medical expenses actually incurred and future medical expenses, loss of amenities in life, transport to hospital, extra nourishment and damage to clothing. In paragraph 12, the Tribunal has stated that "since the compensation is awarded considering the petitioner is totally invalid from the date of the accident itself, and not able to do an work in future, I am not awarding any further compensation for loss of future earning." We reproduce the schedule hereinbelow showing the heads of claims, amount claimed and amount allowed:

Head of claim	***amount claimed***	***amount awarded***
Transport to hospital	5000	5000
Extra nourishment	10000	6000
Damage to clothing	2000	1000
Treatment expenses	300000	262198
Bystanders expenses	9000	11250
Expenses for special care and future treatment		50000
Pain and suffering	250000	30000
Continuing permanent disability	3491860	3940897
Loss of amenities of life	200000	15000

Head of claim	***amount claimed***	***amount awarded***
Total		4321345

Item 8 shows that the amount is calculated for continuing permanent disability and not for loss of earning power.

8. The respondent has filed a cross objection claiming further amount of Rs.6,78,655/-. The grounds show that the contention is that compensation granted towards loss of amenities is too meagre. As against the claim of Rs.2 lakhs, only a sum of Rs.15,000/- has been granted. Similarly, Rs.2 lakhs more is claimed towards compensation for pain and suffering also. The deduction from total salary is also objected to and it is also contended that future prospects in the profession has not been considered by the Tribunal. Further amount is claimed towards future treatment and bystander's expenses.

9. The serious contention raised by the learned counsel for the insurance company, Shri A.R. George is that there is no loss of earning power herein and therefore the Tribunal went wrong in fixing the compensation by adopting the monthly income and 17 as multiplier. Learned counsel for the respondent Shri Salahudeen relied upon the

following judgments in support of his contention that compensation can be awarded for permanent disability as well as loss of earning power:

Kavita v, Deepak and others (2012 ACJ 2161)

Suresh v. New India Assurance Co. Ltd. (2012 (4) KLT SN 154 - SC)

Manickam v. Metropolitan Transport Corporation Ltd. (2013 (3) KLT 248 - SC)

Sanjay Verma v. Haryana Roadways (2014 ACJ 692); and

Shaikh Farooq Mohammad Gaouse v. Thane Municipal Transport Undertaking (2014 ACJ 203)

10. The principles relevant for the determination of compensation in personal injury cases have been discussed by the Apex Court in the judgments relied upon by the learned counsel for the respondent. The Apex Court in **Kavita's case** (2012 ACJ 2161) considered a case where an injured aged 30, who was earning Rs.12,000/- per month, suffered 90% permanent disability and she became vegetative and kept alive by feeding through pipes. The

Tribunal awarded a total compensation of Rs.4 lakhs as against her claim of Rs.85 lakhs. In appeal before the High Court the total quantum was fixed at Rs.16,76,480/-. The High Court granted enhancement under various heads including permanent disability. The matter was taken up in appeal before the Apex Court on behalf of the claimant. The Apex Court considered various judgments to apply the relevant principles, viz. **R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.** (1995 ACJ 366 - SC), **Arvind Kumar Mishra v. New India Assurance Co. Ltd.** (2010 ACJ 2867 - SC), **Nizam Institute of Medical Sciences v. Prasanth S. Dhananka** (2010 ACJ 38 - SC), **Raj Kumar v. Ajay Kumar** (2011 ACJ 1 - SC) and **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd**. (2011 ACJ 2436 - SC).

11. In **Hattangadi's case (supra),** the Apex Court held that “no amount of compensation can restore the physical frame of the appellant. That is why it has been said by courts that whenever any amount is determined as the compensation payable for any injury

suffered during an accident, the object is to compensate such injury 'so far as money can compensate' because it is impossible to equate money with the human sufferings or personal deprivations. Money cannot renew a broken and shattered physical frame."

12. In **Arvind Kumar Mishra's case** (2010 ACJ 2867) it was held that "in some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum."

13. In **Nizam Institute of Medical Sciences' case (supra),** their Lordships held as follows emphasising the factors relevant for fixing damages in the case of an injured:

> "The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but

> even more so on his family and attendants and the stress saps their energy and destroys their equanimity."

14. In **Ramachandrappa's case (supra),** in paragraph 9 the principles relevant were laid down thus:

> "9. The term 'disability', as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

After referring to all these aspects in **Kavita's case (supra),** their Lordships in paragraph 18 has held as follows:

> "18. In the light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of

> accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

Therefore, compensation will have to be granted not only for the physical injury but also for the loss of earnings and inability to lead a normal life and enjoy amenities.

15. The next decision is **Suresh's case** (2012 (4) KLT SN 154 - SC = (2012) 12 SCC 274). Therein, it was held that "even if compensation is granted for permanent disability, compensation can be granted for loss of earning capacity and loss of future earnings." There is elaborate consideration of the relevant principles in the said judgment. That was a case where there was permanent disability at 75%. The Tribunal awarded amounts under various heads including

permanent disability and loss of earning capacity. In the High Court, the compensation fixed was reduced and the argument before the Apex Court was that the view taken by the High Court that compensation cannot be granted under two heads, viz. permanent disability and loss of earning power is not the correct one. This question was addressed by the Apex Court. Their Lordships particularly considered the judgments in **Ramesh Chandra v. Randhu Singh** {(1990) 3 SCC 723} and **B. Kothandapani v. Tamil Nadu State Transport Corporation Ltd.** {(2011) 6 SCC 420}. In **Ramesh Chandra's case (supra)** it has been held as follows:

> ".......This, on the face of it appeals to us as a distinct head, quite apart from the inability to earn livelihood on the basis of incapacity or disability which is quite different. The incapacity or disability to earn a livelihood would have to be viewed not only in praesenti but in futuro on reasonable expectancies and taking into account deprival of earnings of a conceivable period. This head being totally different cannot in our view overlap the grant of compensation under the head of pain, suffering and loss of enjoyment of life. One head relates to the impairment of person's capacity to earn the other relates to the

pain and suffering and loss of enjoyment of life by the person himself."

The Apex Court, therefore, held in paragraph 20 that "the view of the High Court that no compensation can be granted towards permanent disability once compensation is computed for the loss of earning capacity and loss of future earnings is unsustainable. .... In our considered opinion, total deletion is absolutely unjustified and, in fact, runs counter to the principles laid down by this Court in **Ramesh Chandra (supra)** and **B. Kothandapani (supra)."**

16. In paragraph 22 of the judgment in **Suresh's case (supra)**, their Lordships held that the multiplier principle can be adopted for arriving at the quantum in case of permanent disability. Paragraph 28 shows that the Apex Court awarded Rs.2,50,000/- further for permanent disability and paragraph 32 will further show that apart from granting compensation under various heads including pain and suffering, amounts have been granted for loss of earning capacity and permanent disability.

17. These decisions were again considered by the Apex Court in

Manickam's case (2013 (3) KLT 248 - SC). It was held that compensation can be payable both for loss of earning as well as disability suffered by claimant. Therein also, the decisions of the Apex Court in **B. Kothandapani's case (supra)** and **Ramesh Chandra's case (supra)** have been relied upon. Finally, in paragraph 12 it was held as follows:

> "In matters of determination of compensation, particularly, under the Motor Vehicles Act, both the tribunals and the High Courts are statutorily charged with a responsibility of fixing a "just compensation". It is true that determination of "just compensation" cannot be equated to a bonanza. On the other hand, the concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts....."

18. **Sanjay's case** (2014 ACJ 692) is by a three Judge Bench of the Apex Court. The same is relied upon by Shri Salahudeen, learned counsel for the respondent to contend for the position that in a like case where there was 100% disablement due to fracture to spinal cord which resulted in paralysis of whole body, the Apex Court awarded

compensation for pain and suffering at Rs.3 Lakhs, for future treatment at Rs.3 Lakhs and for attendant expenses for whole life at Rs.2 lakhs.

19. **Shaikh Farooq Mohammed Gaouse's case (supra)** is also relied upon to justify the quantum of compensation arrived at.

20. In this case, actually the amount has been granted towards permanent disability, going by the award. This is a case where the respondent has sustained 90% permanent disability, going by the certificate issued by the Medical Board. Of course, the observation made so as to award compensation by the Tribunal, is to the effect that she is incapable of doing any work. In paragraph 9, after observing so, it was held that she is entitled to compensation for loss of future earnings at the same percentage mentioned in Ext.C1. But we find that in paragraph 12 the Tribunal has assessed her position as totally invalid and observed that compensation is not being awarded for loss of future earnings. As we have already noticed, compensation is awarded for continuing permanent disability.

21. The multiplier method adopted by the Tribunal by arriving at the net income on the basis of salary, cannot be faulted in the light of

the principles stated by the Apex Court in **Sarla Verm's case** (2010 (2) KLT 802 - SC). The said principles have been affirmed by a three Judge Bench in **Reshma Kumari v. Madan Mohan** (2013 ACJ 1253 - SC).

22. On the particular facts of this case, it can be seen that for pain and suffering Rs.30,000/- is granted, and for future treatment only Rs.50,000/- is granted. Of course, going by the decisions of the Apex Court we have referred to earlier, compensation can be granted for permanent disability as well as loss of earning power. Herein, Annexure A2 will show that the respondent is now getting a monthly salary of Rs.28,737/-. The fact that she has suffered paraplegia to the lower limbs cannot be disputed. Obviously, she is being carried to the school, as submitted by the learned counsel for the respondent, which cannot be said to be untrue as she cannot use her lower limbs for walking or for travelling or even for driving. But the fact remains that she is able to work as a teacher and therefore there is no total loss of earning capacity. The percentage of physical disability is 90%. The principle is well settled that permanent disability, viz. physical injury

itself will have to be compensated. But at the same time, the compensation fixed cannot be too high also. Therefore, we will have to fix a just and fair compensation as far as the respondent is concerned.

23. Considering the permanent disability and the fact that as of now she is continuing in the job, we are of the view that by reckoning the permanent disability itself, compensation can be arrived at. For the said purpose, we adopt the same amount fixed by the Tribunal, viz. at Rs.2,57,575/- annually and 16 is taken as the multiplier also. Even though the argument raised by the learned counsel for the appellant is that the monthly amount claimed will have to be totally eschewed and she need be awarded only a fixed sum for permanent disability, it cannot be accepted. Even for fixing the due compensation for permanent disability the multiplier method can be adopted. The following method of calculation is adopted by us which will result in granting just and fair compensation:

257575 x 16 x 75/100 = 3090900

Instead of 90%, we are adopting 75% alone.

24. The above amount will represent compensation for

permanent disability. The Tribunal and this Court have not reckoned any chance for future increase since evidently the school authorities will not be able to give her a promotion based on the physical ailment of the respondent. The future being bleak for her, such opportunities may not come. Therefore, she will have to continue in the same status as rightly pointed out by the learned counsel for the respondent. Therefore, we are of the view that the above amount will represent the quantum of compensation for permanent disability caused by the accident.

25. As far as bystander's expenses are concerned, the Tribunal has granted Rs.11,250/- only. The respondent was treated as inpatient for 75 days. The amount granted is at the rate of Rs.150/- per day. She was treated in MIMS Hospital as well as Christian Medical Mission Hospital and the accident occurred in the year 2009. Therefore, we will be justified in granting amount at the rate of Rs.250/- per day and the total compensation for bystander's expenses during the period of hospitalisation will be Rs.37,500/-. Evidently, she will have to be attended by a bystander throughout her life. She is unable to carry out

her normal avocations in life including her physical needs. Even for her personal needs, she will have to depend upon a bystander. Therefore, we further grant an amount of Rs.2 lakhs towards bystander's expenses for the whole of her life. For pain and suffering also, as against her claim of Rs.2.5 lakhs, what is granted by the Tribunal is only Rs.30,000/- which is too low, going by the seriousness of the injuries and the period of treatment. We grant a total amount of Rs.1 lakh under the head of pain and suffering. The next item is loss of amenities in life and against the claim of Rs.2 lakhs, the Tribunal granted only Rs.15,000/-. It cannot be disputed that she has lost all pleasures of life. The disability will cause great inconvenience to her in pursuing her normal avocations in life. It is also stated that she has lost the capacity to bear a child also. By reckoning all relevant factors, we grant an amount of Rs.2 lakhs towards loss of amenities and convenience in life. As compensation for transport to hospital, the Tribunal granted only Rs.5,000/-. In the light of the fact that she had attended two hospitals, we fix an amount of Rs.10,000/- in total for expenses towards transport to hospital. The Tribunal has granted

Rs.50,000/- towards expenses for special care and future treatment. It is evident that she will have to undergo physiotherapy and other treatments as revealed from the discharge summary issued by the Christian Medical College, for which she will have to incur additional expenses. Therefore, we grant an amount of Rs.1 lakh under this head.

Accordingly, the total compensation will be recomputed as follows:

Head of claim	***Amount awarded by the Tribunal (Rs)***	***Modified award passed by this Court (Rs)***
Transport to hospital	5000	10000
Extra nourishment	6000	6000
Damage to clothing	1000	1000
Treatment expenses		262198
Bystanders expenses	11250	37500
Bystander expenses for life		200000
Expenses for special care and future treatment	50000	100000
Pain and suffering	30000	100000
Continuing permanent disability	3940897	3090900
Loss of amenities of life	15000	200000
Total		4007598 (rounded off to 4007600)

(Rupees Forty Lakhs seven thousand and six hundred only). The entire amount of compensation will carry interest at 9% from the date of petition instead of 7% granted by the Tribunal.

As per the interim order dated 12.12.2012 this Court has granted a stay on condition that the appellant will deposit an amount of Rs.15 Lakhs within a period of two months and the balance shall be deposited as directed in the award. Going by the award of the Tribunal, the Tribunal has ordered payment of a sum of Rs.5 Lakhs to the respondent and the remaining amount was directed to be deposited in a nationalised bank. We permit the respondent/claimant to withdraw the amount on deposit being made by the insurance company, since the accident is of the year 2009.

The appeal and cross objection are accordingly, allowed in part. The respective parties will suffer their costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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