

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&**

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

MACA.No. 1218 of 2006 ()

**AGAINST THE AWARD IN OPMV 1305/2000 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
IRINJALAKUDA DATED 30-05-2005**
APPELLANT/PETITIONER:

**KOCHUTHRESSIA, W/O. DAVID
PAREKKATT HOUSE, MALA KIZHAKKEANGADY DESOM
VADAMA VILLAGE.**

**BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.NAIR AJAY KRISHNAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.VIMAL KUMAR.A.V.
SRI.A.G.GIRISH KUMAR**

RESPONDENTS/RESPONDENTS:

- * 1. V.K.PRASADAN, S/O. KARAPPAN
VALAPPAD HOUSE, P.O. MURINGOOR, CHALAKUDY.[DELETED]**

**[RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT AS PER ORDER DATED 12.6.2015 IN MACA 1218/2006]**

- 2. P.D.BABU, S/O.P.J.DEVASSY,
PULLOKKARN HOUSE, NEAR DEVAMATHA HOSPITAL
KORATTY (P.O.)**

- 3. THE MANAGER,
UNITED INDIA INSURANCE COMPANY LIMITED
CHALAKUDY BRANCH.**

R3 BY ADV. SRI.S.ARUN RAJ

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.1218 of 2006

Dated this the 8th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

The injured appellant in this appeal is aggrieved by the meagre compensation granted by the Tribunal. The total compensation awarded by the Tribunal is only Rs.5,000/- with interest at the rate of 6% per annum from 17.10.2000.

2. Heard both sides.

3. The learned counsel for the appellant submitted that the accident occurred while she was travelling as a pillion rider in a motorcycle bearing registration No.KL-7/B 7589. A speeding car bearing registration No.KL-8/C9 which came from the opposite direction hit the motorcycle and she sustained serious injuries.

4. To prove that the accident occurred police records have been produced. Ext.A2 is the FIR and Ext.A6 is

the charge sheet. As far as the negligence in causing the accident is concerned, there is no contra finding. Total compensation claimed is Rs.1 lakh. The appellant was aged 53 at the time of the accident and she was not having any specific avocation and she was managing the household duties, even though it is submitted that she was having a broiler farm.

5. Learned counsel for the appellant submitted that actually she had suffered dislocation of the right shoulder which has resulted in functional disability. This aspect was considered by the Tribunal in paragraph 8. But the Tribunal did not accept the same as no fractures were seen. Ext.X1 is the treatment records of St. James Hospital, Chalakudy, where she was treated from 20.3.2000 to 23.3.2000 as an inpatient.

6. We find from the record of diagnosis and the noting of the doctor that there was no head injury but they have noted subluxation (R) acromio, C.T. scan of brain was also done and the finding is that no abnormality has

affected to the brain.

7. The disability certificate is issued by an Orthopaedic Consultant on 21.3.2005. He has also recorded that there is pain and tenderness of right acromia - clavicular joint, partial ankylosis of right shoulder scapula. Active painless motion to 90° abduction and rotation full flexion and extension. It is recorded further that functional disability is having (a) to carry objects with (Rt) upper limb (b) to raise objects above the head with (Rt) upper limb (c) to do household works. The doctor has assessed the permanent disability at 8% as per Mc-bride's scale.

8. The learned counsel for the Insurance Company submitted that since there was no fracture, the case of disability cannot be believed. But in the light of the notings of the Doctor where subluxation (R) acromio has been noticed, there is no suppression of any material fact by the appellant. What is recorded by the Doctor in the disability certificate is the functional disability to the body and it may not be the disability to any particular limb.

9. She being a housewife, we take Rs.2,500/- as the monthly income for the purpose of fixing compensation. The multiplier will be 11. For permanent disability the amount will be Rs.26,400/- which is rounded off to Rs.27,000/-. The Tribunal has awarded Rs.5,000/- which also is added to the above amount. As far as the hospital charges are concerned no amount has been granted by the Tribunal. Evidently she had undergone scanning and further tests. Therefore, we fix an amount of Rs.2,000/- towards medical expenses and transportation. We fix another Rs.6,000/- towards pain and suffering and loss of amenities. Hence total compensation will be Rs.40,000/- (Rupees Forty thousand only).

The compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. The appellant will be entitled for the release of the amount.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/