

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

MACA.No. 858 of 2012 ()

AGAINST THE AWARD IN OPMV 999/2006 of MACT,THODUPUZHA DATED
26-11-2011

APPELLANT/PETITIONER:

ANILKUMAR
S/O.KRISHNA PILLAI, PULLANIKKATTU HOUSE
KUMARAMANGALAM KARA & VILLAGE
KUMARAMANGALAMPOST, IDUKKI DISTRICT.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENTS/RESPONDENTS:

1. KUNJAPPAN
S/O.RAMAN, ONTHANPARAYIL HOUSE, PUTHUPARIYARAM POST
MANAKKAD VILLAGE, THODUPUZHA -685584.

2. THE CONSERVATOR OF FORESTS,
HIGH RANGE CIRCLE, S.H.MOUNT POST, KOTTAYAM DISTRICT
PIN-686001.

3. THE KERALA STATE INSURANCE,
DEPARTMENT
REPRESENTED BY THE DISTRICT INSURANCE OFFICER
THODUPZHA-685584.

R2-R3 BY ADV. GOVERNMENT PLEADER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 21-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A No.858 OF 2012

Dated this the 21st day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant before the Tribunal. He was injured in an accident which occurred on 25.4.2006 at 4.45 p.m. The challenge is regarding the compensation allowed by the Tribunal.

2. While the appellant was riding a motor cycle bearing Reg.No.KL 6C/5789 along Kothaikunnu bye-pass road, a jeep bearing Reg.No.KL 5 J/37 driven by the first respondent before the Tribunal hit the motor cycle. The appellant sustained serious injuries and he was treated at Chazhikattu Hospital, Thodupuzha.

3. Evidence was let in by the appellant and Exts.A1 to A10 have been marked. They include police reports in Crime No.255/2006 as well as treatment certificates. Ext.A9 is the disability certificate issued from the Govt. Hospital, Thodudpuzha.

4. The total compensation granted by the Tribunal is

₹2,26,479/, but it has been limited to ₹2 lakhs as the claim was limited to ₹2 lakhs by the appellant in the application.

5. Firstly, it is submitted by the learned counsel for the appellant that the Tribunal rejected the application for amendment for enhancing the claim amount under different heads filed as I.A.No.1267/2011 without any sufficient reason.

6. The learned Government Pleader submits that the amount granted is reasonable especially since the appellant has limited the claim to ₹ 2 lakhs.

7. We find that in the light of the judgment of the Supreme Court in **Nagappa v. Gurudayal Singh (2003(1) KLT 115(SC)**, where the view taken is that there is no restriction for the Tribunal or the Court to grant amounts beyond the amount claimed, the application for amendment ought to have been allowed by the Tribunal. In that view of the matter, there cannot be any objection for considering the enhancement of the claim. The total claim raised then as per the amendment application is ₹2,60,000/-. But in the light of the above judgment this court can award just and fair compensation if the amount

assessed as compensation exceeds it.

8. The details of the injuries are evident from paragraph 8 of the award which we extract below :

- “1. Compound fracture of both bones of right leg with 15 x 05 cm. Bone deep laceration
2. 08 x 04 x 01 cm. laceration of right forearm
3. Laceration on right 5th toe
4. 02 x 0.5 cm. laceration below right eyebrow
5. Loss of right upper both incisors
6. 04 cm. long laceration on chin.”

9. Ext.A7 is the treatment certificate issued from the hospital.

He was treated in the hospital on different occasions as inpatient and various treatment procedures have been undertaken. Initially, appellant was admitted in the hospital on 25.4.2006 and was discharged on 7.5.2006. External fixator was applied under spinal anesthesia during this period. He was later admitted on 11.5.2006 and was discharged on 16.5.2006 and plaster was removed on 9.6.2006. He was advised below knee cast for three weeks. The further admission is on 23.06.2006 and bone grafting was done under spinal anesthesia and he

was discharged on 4.7.2006. External fixator was removed on 30.8.2006 and below knee slab was applied. Removal of plaster was done on 7.11.2006. The X-ray taken on 5.12.2006 and 15.3.2007 showed uniting fracture and thereafter knee brace was applied. X-ray taken on 5.6.2008 also showed united fracture. Ext.A9 disability certificate shows permanent disability at 16%.

10. We heard the learned counsel for the appellant and the learned Government Pleader on the legality of the quantum of compensation granted under various heads. The Tribunal has awarded compensation in the following manner and we reproduce the table provided in paragraph 17 below :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	36000
Transportation expenses	3000
Extra nourishment	3000
Damage to clothing etc.	500
Medical expenses	45979
Bystander expenses	6000
Pain and suffering	20000
Disability	92000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Disfigurement	10000
Loss of amenities	10000
Total	226479 limited to ₹2,00,000/-

11. It is contended by the learned counsel for the appellant that the appellant was a contractor with Kerala State Electricity Board and the accident occurred while he was travelling along with the Assistant Engineer of the KSEB. In the FI statement given by the Assistant Engineer, the accident has been described and the appellant is described as the contractor. The monthly income assessed by the Tribunal for fixing the compensation is at ₹3,000/-. According to the learned counsel the income should have been fixed on a higher pedestal. There is no evidence to show the actual turn over of his business. Being a contractor the profit earned in the business will be the pointer to show his monthly or annual income. There is no case for the appellant that the contract works had to be terminated also. What is in evidence is that he was in continuous treatment for a long time and

therefore he was laid up. The disability certificate does not show that there is functional disability and consequential loss of earning power and in that view of the matter, the true principles to be adopted is to quantify the amount for pecuniary and non pecuniary loss. If that be so, the appellant is liable to be compensated for permanent disability by applying a notional income. We find from the assessment of various aspects that the Tribunal has granted compensation under different heads. As regards the loss of earning for one year, the Tribunal has granted ₹36,000/- taking ₹3,000/- as the monthly income. In the light of the discussion made above, we find no reason to increase the same.

12. As far as transportation, we find that he had been in hospital on different occasions and the Tribunal has granted ₹3,000/- as against the claim of ₹5,000/-. We find that since the appellant was in and out of the hospital on different occasions for completing various treatment procedures, ₹5,000/- claimed is reasonable and we grant the same.

13. For extra nourishment, the Tribunal has granted ₹3,000/- as compensation, which we enhance to ₹5,000/-. As regards the

treatment expenses, the total amount claimed is ₹75,000/- out of which going by Ext.A10, ₹45,979/- has been granted. The learned counsel for the appellant brought our notice to Ext.A8 which is the certificate issued by the Dental Surgeon. It is submitted that ₹18,000/- has been assessed therein for replacement of tooth which has been lost and for bridging tooth loss. It appears that the same has been omitted to be considered by the Tribunal. In the light of Ext.A8 certificate we award a further amount of ₹18,000/- under the head of medical expenses.

14. As far as bystander expenses is concerned, the Tribunal has granted a sum of ₹6,000/- @ ₹1500/- for four months. The total claim under the said head is ₹15,000/-. We grant a sum of ₹15,000/- towards bystander expenses which is reasonable going by the period of treatment. For pain and suffering, the Tribunal has granted ₹20,000/- as against the claim of ₹50,000/-. Considering the seriousness of the injuries sustained and the period of treatment as well as the treatment procedures undertaken, we grant a sum of ₹35,000/- under this head.

15. Towards loss of earning power, the Tribunal has assessed compensation at ₹92,000/-. Actually the amount had to be granted

towards permanent disability sustained by him which will enable him to earn more amount under the said head and also for loss of amenities and enjoyment of life and shortened expectation of life.

16. The learned Government Pleader submits that there is no evidence to show that the earning capacity has been affected. Therefore, we will convert the amount granted under the head of loss of earning power to that of compensation for permanent disability sustained. The learned counsel vehemently pointed out that the amount should have been quantified by adding more amounts towards monthly income. But in the light of the discussions we have made already, as the details were not available, the Tribunal could have only arrived at a notional income. But considering the permanent disability sustained by him, it has to be compensated. We slightly enhance the said amount and award a total amount of ₹1,00,000/- towards permanent disability sustained.

17. ₹10,000/- each is granted by the Tribunal towards disfigurement and loss of amenities. Herein the difficulties experienced by the appellant have been recorded in paragraph 12 which

includes difficulty in walking for long distance, running and standing and movements at ankle joint (r) are restricted. The same will affect the normal avocations in life and he will not be able to move about or travel as before and like others. The same will be there life long and he will have to experience hardships and difficulties alike. In that view of the matter, we grant an amount of ₹35,000/- each for disfigurement as well as loss of enjoyment of life, shortened expectation of life and for loss of amenities.

18. Accordingly, the total compensation will be in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	36000
Transportation expenses	5000
Extra nourishment	5000
Damage to clothing etc.	500
Medical expenses	63979
Bystander expenses	15000
Pain and suffering	35000
Disability	100000
Disfigurement	35000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of amenities	35000
Total	330479 Rounded off to ₹3,30,480/- (Rupees three lakhs thirty thousand four hundred eighty only)

19. Lastly the learned counsel submitted that the interest awarded is only @ 7.5%. We grant it @ 9% per annum in the light of the judgment of the Supreme Court in Supeidei (Smt.) and others v. National Insurance Company Ltd. and another (2009(4) SCC 513). We find that the Tribunal has not awarded anything towards cost. The total amount of cost is shown as ₹ 5544.50. We allow the said amount as costs.

The appeal is allowed to the above extent.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.