

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

MACA.No. 913 of 2012 ()

AGAINST THE AWARD IN OPMV 194/2005 of M.A.C.T., PUNALUR DATED
07-05-2011

APPELLANT/PETITIONER:

ARAVAINDAKSHAN
S/O. GANGADHARAN PILLAI, AJITHAVILASOM
NELLIMOODU MURI, KALATHUPUZHA.

BY ADVS.SRI.L.MOHANAN
SMT.LIGEY ANTONY

RESPONDENTS/RESPONDENTS:

1. SAIFUDEEN
S/O. ABDULKHADEAR, C.V. HOUSE, KARUKONE
ALAYAMON.P.O., ANCHAL-691306.

2. JAYADEEP
S/O. SREEDHARAN, VALLIPPACHAYIL VEEDU, PUTHEYAM MURI
ALAYAMON.P.O., PIN-691306.

3. THE BRANCH MANAGER
M/S. NEW INDIA ASSURANCE COMPANY LIMITED
KOTTARAKKARA-691506.

R3 BY ADV. SMT.T.C.SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.913 OF 2012

Dated this the 31th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is from the award in O.P.(MV)No.194/2005 on the file of the Motor Accidents Claims Tribunal, Punaloor. It is a case where the appellant sustained personal injuries in an accident which occurred on 2.1.2005 at about 11 a.m. He was riding a motor cycle through Anchal - Punalur road. At a place called Karavaloor, it was hit by a bus bearing Reg.No.KL 2-F 4176.

2. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company.

3. The total claim is at `5 lakhs and the Tribunal has granted a total amount of `1,35,530/- with interest @ 7.5% per annum from the date of petition. The injuries sustained by the appellant according to the learned counsel for the appellant were serious. He was under treatment for 96 days as inpatient in the Medical College Hospital and

he was also subsequently treated in Specialist Hospital for implant removal. It is submitted that the Tribunal has also observed that the condition of the appellant is pathetic. He was a salesman in an electrical shop and as per Ext.A21, he was getting `250/- per day as salary. It is submitted that the Tribunal fixed the percentage of disability at 15% only in spite of production of two certificates Exts.A16 and A20 which respectively showed the percentage of disability as 25% and 18%. The first one is issued by the District Medical Board. It is also submitted that the monthly income fixed is too low considering the employment potential of the appellant.

4. The learned counsel for the Insurance Company submitted that the quantum awarded is reasonable.

5. From the details available from the documents produced, it can be seen that he had sustained the following injuries :

- 1) Type III B compound fracture both bone (R) leg.
- 2) Comminuted fracture both bones lower end (R) forearm.

Type III compound.

6. The appellant had also sustained lacerated wound over right wrist and right leg and over the dorsum of right foot.

7. We have perused the certificate Ext.A20 issued by the Department of Orthopaedics, Medical College Hospital, Thiruvananthapuram which gives the entire details of the treatment done therein. It evidences the fact that after being admitted on 2.1.2005, he was discharged on 2.3.2005. He was treated with wound debridement followed by external fixator for right leg and external fixator for right forearm. As on the date of discharge, his right leg was immobilised in long leg POP cast and right forearm in long arm cast. He was readmitted on 4.4.2005 with features of non union involving right leg and forearm. The fracture failed to unite and he was readmitted for ring fixator application which was done on 13.4.2005. Non union involving lower end radius (R) was managed by arthrodesis. Again he was readmitted on 13.5.2005 for recorticotomy and guide wire insertion. It is also stated that he continued treatment as outpatient. He was readmitted for removal of ulnar plate and excision

of lower end of ulna due to dorsal subluxation of lower end of ulna. Illizarov fixator was removed on 28.12.2005 and he was advised progressive weight bearing in POP cast. Immobilisation involving right wrist was discontinued on 12.1.2006 and that of right leg was discontinued on 31.03.2006.

8. Going by the said disability certificate, he has shortening of right leg by one inch. There is partial ankylosis of right ankle joint with motion limited to an arc from 90° to 100° plantar flexion. There is total ankylosis of right wrist joint 20° dorsiflexion. There is recurrent flaring up of infection (R) leg. It is also stated that rotations involving (R) forearm limited to an arc from 50° pronation to 50° supination. Therefore the permanent disability is assessed as 18%.

9. We find no reason to reduce it to 15% as done by the Tribunal. The disability certificate issued by the District Medical Board showed more percentage namely 25% and we will abide by the percentage of disability assessed in Ext.A20 which is the certificate issued later. The appellant was under POP cast for a long time and he

was under inpatient treatment for a total period of 96 days. The disability will definitely result in loss of enjoyment of life and loss of amenities of life. Being the age group of 30, the multiplier will be 17. For fixing just and fair compensation, we fix the monthly income at `5,000/- since the appellant was working in a shop. Definitely, the disability will affect his functions as such also. Therefore due compensation will have to be granted in that regard. We are of the further view that the appellant will be entitled for a reasonable amount for bystander's expenses as well as extra nourishment. For pain and suffering, he will be entitled to further enhancement in view of the long treatment. We grant an amount of `60,000/- for partial loss of earnings for a period of one year. The learned counsel for the appellant submits that the medical expenses granted is meagre, whereas the learned counsel for the Insurance Company points out that for the bills produced `30,426/- has already been granted. We maintain the amount at `30,426/-.

10. Accordingly, the compensation is refixed in the following

manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Pain and suffering	50000
Partial loss of earnings	60000 (12 x 5000)
Transportation charges	7500
Extra nourishment	9600
Bystander's expenses	19200 (96 x 200)
Permanent disability	183600 (5000 x 12 x 17 x 18%)
Loss of amenities	50000
Medical expenses	30426
Total	410326 Rounded off to `4,10,330/- (Rupees four lakhs ten thousand three hundred thirty only)

11. The enhanced compensation will carry interest @ 9% per annum from the date of petition till realisation. The Insurance Company has been found liable by the Tribunal to indemnify the owner and we confirm the said finding. The Company will deposit the amount within a period of three months and we permit the appellant 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

SV.