

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. 935 of 2012 ()

AGAINST THE AWARD IN OPMV 1085/2008 of M.A.C.T., MANJERI DATED 23-11-2011

APPELLANT(S)/APPELLANT/PETITIONER.:

**K.BINU,
S/O.NEELANDAN, KADINCHEERI HOUSE, CHEPPILIKKUNNU P.O.
KONDOTTY, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SRI.A.SANTHOSHKUMAR
SRI.V.S.HARIKRISHNAN (VAZHUTHACAUD)**

RESPONDENT(S):

**1. MUSTHAFA.M,
S/O.ABOOBACKER. M, MACHINGAL HOUSE, MUNDAPPALAM P.O.
KONDOTTY, MALAPPURAM DISTRICT-673 638.**

**2. NATIONAL INSURANCE COMPANY LTD.,
KORAMBAYIL ARCADE, MANJERI P.O.
MALAPPURAM DISTRICT-676 121.**

**R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R2 BY ADV. SRI.P.JACOB MATHEW
R1 BY SRI.M.A.GEORGE**

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

AD

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

M.A.C.A No. 935 of 2012

Dated this the 31st day of August, 2015

JUDGMENT

K.P.JYOTHINDRANATH, J

This appeal is preferred by the claimant in O.P (MV).No.1085/2008 on the file of the Motor Accidents Claims Tribunal, Manjeri. The quantum of compensation awarded is under challenge. The relevant facts are as follows:

2. Appellant is an injured pedestrian. While he was walking through the Kondotty-Turakkal road, a bike bearing registration No.KL-10/AA 3904 came from Kozhikode side and knocked him down. He sustained serious injuries including fracture of both bones. He was treated at Medical College Hospital Calicut as inpatient for 17 days.

3. The appellant moved a claim petition before the Tribunal claiming a total compensation of Rs.2,50,000/-. The Tribunal awarded only Rs.63,260/-. The tribunal also found 10% contributory negligence on

the side of the appellant. Aggrieved by the said award this appeal preferred.

4. When the appeal came up for hearing the Counsel for the appellant submitted that the only reason for attributing contributory negligence is that the accident occurred on the tared portion. It is also the submission that the vehicle involved is only a motor bike which need only a small portion of the road. It is the further submission that the Tribunal not considered the fact that the injured was only a pedestrian. It is the further submission that, even though the appellant was a driver by profession and was also holding heavy driving licence, the Tribunal only considered an income of Rs.3,500/- per month for calculation purpose. It is the further submission that even though Ext.A5, a certificate issued by the employer was produced before the tribunal, it was not considered by the tribunal. It is the further submission that a Medical Board assessed his disability as 4%, the certificate is marked as Ext.X1 before the Tribunal. His functional disability will be much higher. The submission

was that an interference by this Court is warranted and re-fixation of the just compensation is to be done.

5. We heard the learned Counsel for the insurance company. The Counsel submitted before us that even though Ext.A5 was produced it was not proved by the appellant as well as no reliable evidence is adduced regarding his income. Under such circumstances, the Tribunal adopted Rs.3,500/- as his monthly income. It is also the submission that the accident occurred on the tared portion of the road, which is an indication that he was negligent. Under such circumstances, Tribunal deducted 10% from the total compensation assessed on the ground that the accident occurred due to the contributory negligence of the appellant also.

6. After hearing the Counsels, we had gone through the award also. It can be seen that the tribunal considered the negligence aspect in para 6 of the award. The reason shown is that the appellant admitted in evidence that the accident occurred on the tared portion.

Only because the accident occurred on the tared portion, it cannot be held that the accident occurred due to the contributory negligence of the appellant also. The appellant was examined before the Tribunal. He got no case that the accident occurred due to negligence on his side also. There is nothing to disbelieve the evidence of PW1. The vehicle involved is only a two wheeler. If the rider was careful he could easily avoid an accident. No evidence adduced by the rider. Hence it is found that the accident occurred due to the negligence of the rider of the bike. The finding of the Tribunal that the accident occurred due to 10% contributory negligence of the appellant is hereby set aside. It is held that the accident occurred due to the negligence of the rider of the bike.

5. Now, the quantum of compensation has to be considered. Here is a case where the appellant sustained type-II open fracture of both bones of leg. He was treated as inpatient in the Medical College hospital for 17 days. Ext.A2 is the wound certificate. Since the fracture is on the leg, that also both bones fracture, he may not be able

to do any work for about five months. It is also to be noted that he produced evidence to show that he was a licenced driver that also a licence for driving a heavy vehicle. The accident occurred in the year 2008. ***Minu Rout and Another Vs Satya Pradyumna Mohapatra and Another*** reported in ***(2013) 10 Supreme Court Cases 695*** the Apex Court adopted Rs.6,000/- as monthly income for a driver where the accident occurred in the year 2006. Thus considering all attending circumstances, we feel that it will be just and proper to take Rs.6,000/- as his monthly income. Then the just compensation is assessed as follows:

<i>Head of claim</i>	<i>Amount awarded in Rupees</i>
(a) Loss of earning (6000x5)	Rs.30,000/-
(b) Medical expenses	Rs.8,000/-
(c) Bystanders expenses (17x200)	Rs.3,400/-
(d) Damage to clothing	Rs.500/-
(e) Transportation	Rs.1,500/-
(f) Pain and suffering	Rs.30,000/-
(g) Loss of amenities	Rs.10,000/-
(h) Disability (6000x12x12x4/100)	Rs.48,960/-
Total	Rs.1,32,360/-

6. Thus the appellant is entitled for a total compensation is assessed as Rs.1,32,360/- (Rupees One

Lakh Thirty Two thousand Three hundred and Sixty only) which is rounded to **Rs.1,32,400/-** (Rupees One Lakh Thirty Two thousand Four hundred only). Thus, the appellant is entitled for a total compensation of Rs.1,32,400/-. The enhanced compensation will bear 9% interest from the date of petition.

7. The insurance company shall deposit the amount within three months of this order. On deposit, the appellant will be entitled for release of the compensation.

The M.A.C.A No. 935 is allowed. No order as to cost in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR,J

Sd/-
K.P.JYOTHINDRANATH, J

//TRUE COPY//

P.A. TO JUDGE

AD