

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE SMT. JUSTICE P.VASHA

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

MACA.No. 1472 of 2006 ()

**AGAINST THE AWARD IN OPMV 1884/2003 of M.A.C.T.,KOTTAYAM
DATED 19-04-2006**

APPELLANT/PETITIONER::

**JOBIN JOSEPH @ JOMON, S/O.JOSEPH,
PUTHENPARAMBIL HOUSE, PERUMBANACHI BHAGOM
MADAPPALLI KARA, MADAPPALLY VILLAGE.**

BY ADV. SRI.K.A.HASHIM

RESPONDENTS/RESPONDENTS::

- 1. M.N.SUDHAKARAN, S/O. CHODIAN,
MALIKAL HOUSE, NEAR PANNAYAR KAVU DEVI TEMPLE,
PARUMALA KARA, KADAPRA VILLAGE (DELETED)**
- 2. E.M. SHINOJ, S/O.MANIYAPPAN,
EDAVALANJIYIL HOUSE, PERUNNAI EAST P.O.
CHANGANACHERR. (DELETED)**

**[RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY, AT THE
RISK OF THE APPELLANT, VIDE ORDER DT27.2.2015 IN I.A.No.763/15 IN
M.A.C.A.No.1472/2006]**

- 3. THE NATIONAL INSURANCE CO. LTD.,
THIRUVALLA.**

R.3 BY ADV. SRI.MATHEWS JACOB (SR.)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

M.A.C.A.No.1472 OF 2006

Dated this the 17th day of March, 2015

J U D G M E N T

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**Asha, J.**

The appellant met with an accident on 5.8.2003 while travelling in a motor cycle he was hit by another motor cycle and thrown off to the road. He sustained severe injuries and was taken to the St.Thomas Hospital, Chethipuzha. After the period of treatment, he filed a claim petition before the Tribunal seeking compensation to the tune of Rs.2,50,000/-. The Tribunal awarded a sum of Rs.71,500/- along with 6% interest. This appeal is filed seeking enhancement of compensation.

2. We heard the learned counsel appearing on both sides.

3. The injuries sustained by the appellant are fracture of left clavicle and fracture of right metacarpal thumb. He underwent inpatient treatment for a period of six days. His disability was assessed as per Ext.A9 and A10 certificates. In disability certificate, Ext.A9, the appellant was found to have tenderness carpo metacarpal, metacarpo phalangeal joints right

thumb, swelling left clavicle restriction of movements. It was found that he was having permanent partial functional disability of 9%. Ext.A10 certificate issued by the Oral and Maxillofacial Surgeon, Matha Hospital, Kottayam certified that the appellant underwent treatment for fracture of his teeth. It is found that he has the difficulty to chew food. Because of these difficulties, his disability was assessed as 8%. The Tribunal reckoned the disability as 6% of whole body and assessed compensation towards disability as Rs.30,600/- applying the multiplier of 17. The monthly income of the appellant was fixed as Rs.2500/- p.m. The appellant claimed that he was a freeland photographer earning monthly income of Rs.6000/-. As there is no contrary evidence regarding the claim relating income, we are of the view that his monthly income can be fixed as Rs.3,500/- p.m. The appellant was aged 24 years. The proper multiplier is 18. Reckoning his income as Rs.3,500/- and the disability as 6%, the compensation under the head of disability will come to Rs.45,360/- ( $\text{Rs.3500} \times 12 \times 18 \times 6 / 100$ ). The Tribunal has awarded a sum of Rs.5,000/- towards loss of earning for a period of two months, which we enhance to Rs.7000/-. The appellant has undergone various procedures of treatment on account of fractures

on his clavicle as well as the fractures of teeth. He was unable to chew and take food for a long time. The appellant would have experienced very severe discomfort and inconvenience for a long period. We therefore award a sum of Rs.25,000/- towards pain and suffering. On account of the disabilities incurred, the appellant will not be able to enjoy the normal amenities of life . Therefore, we enhance the compensation under the head of loss of amenities to Rs.25,000/- from Rs.12000/- awarded by the Tribunal.

3. The award passed by the Tribunal is accordingly modified as follows:

| <i>Head</i>                             | <i>Amount awarded by the Tribunal</i> | <i>Amount modified</i> |
|-----------------------------------------|---------------------------------------|------------------------|
| Permanent disability                    | 30600                                 | 45360                  |
| Loss of earning                         | 5000                                  | 7000                   |
| Damage to clothing                      | 500                                   | 500                    |
| Transportation                          | 1000                                  | 1000                   |
| Medical expenses (supported by bills)   | 5900                                  | 5900                   |
| Bystanders expenses                     | 1500                                  | 1500                   |
| Loss of pain & sufferings               | 15000                                 | 25000                  |
| Loss of amenities and enjoyment in life | 12000                                 | 25000                  |
| <b>Total</b>                            | <b>71,500/-</b>                       | <b>1,11,260/-</b>      |

4. The total compensation will come to Rs.1,11,260/-. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition.

5. The Insurance Company shall pay the amount, less any amount already deposited as per the award impugned, within a period of three months.

Appeal is allowed accordingly and the parties shall suffer their respective costs.

**sd/-**  
**T.R.RAMACHANDRAN NAIR,**  
**JUDGE.**

**sd/-**  
**P.V.ASHA, JUDGE.**

ps/18/3/2015

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PA to Judge