

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

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

**MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936**

**MACA.No. 1237 of 2012 (E)**  
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**AGAINST THE AWARD IN OPMV 173/2009 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,  
MANJERI, MALAPPURAM, DATED 29-03-2012**

**APPELLANT/PETITIONER:**  
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**ABDUL ALI AGED 48 YEARS  
S/O. KUNCHI MOHAMMED, PARA AYYANGAL HOUSE  
VILAYIL AMSOM, MUNDAKKAL DESOM, P.O.MUNDAKKAL  
ERNAD TALUK, MALAPPURAM DISTRICT.**

**BY ADV. SRI.SIRAJ KAROLY**

**RESPONDENTS/RESPONDENTS:**  
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- 1. SIDEEQUE N.K.  
S/O. MAMMADISHA N.K., KOONUM PILAKKAL HOUSE, THAVANOOR  
KUZHIMANNA P.O., MALAPPURAM DISTRICT.(DRIVER)  
PIN-673 641.**
- 2. MOHAMMED M.  
S/O. AMINA, CHAKKITTAKANDI HOUSE, PULIAKODE  
MELMURI P.O., AAKKAPRAM, MALAPPURAM DISTRICT-676 514.**
- 3. RELIANCE GENERAL INSURANCE CO. LTD.  
4TH FLOOR, ELIZEBATH ALEXANDER MEMORAIL BUILDING  
SHANMUGHAM ROAD, MARINE DRIVE, KOCHI-682 031.**

**R3 BY ADV. SMT. K.S. SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**JJJ**

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

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M.A.C.A. No. 1237 of 2012  
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Dated this the 16<sup>th</sup> day of February, 2015

**J U D G M E N T**

T.R.Ramachandran Nair, J.

In this appeal the appellant is aggrieved by the denial of any amount towards disability compensation.

2. We now come to the bare facts for the disposal of the appeal. The accident occurred on 14.06.2008. He was travelling in a bus when the accident occurred. It hit against a lorry at a place called Kizhisseri on Kondotty - Mundakkal road at about 6.15 pm on that day. The policy issued by the Insurance Company is admitted.

3. Before the Tribunal evidence was adduced. Exts.A1 to A11 series have been produced and marked in evidence. Ext.X1 is the disability certificate issued by the Medical Board.

4. Heard both sides.

5. Learned counsel for the appellant submits that even though the disability certificate shows 28% disability, which is of a permanent nature and the appellant has proved his monthly income by producing Ext.A7 salary certificate showing an amount of Rs.15,040/- per month, no amount has been granted. It is submitted that only for loss of enjoyment of life and loss of amenities, amounts have been granted.

6. The Tribunal has obviously taken the view that there is no loss of earning power and therefore, only under the head of 'loss of amenities and convenience in life' the amount need be granted. The above view is not correct in the light of the various decisions of the apex Court including one in **Kumari Kiran (through her father Harinarayan) v. Sajjan Singh and others - 2015 (1) SCC 539**. When the injury has resulted in disability, there may be cases where there will be loss of earning power as a result of the injuries sustained. But there are cases where there will not

be any change, as far as the applicant is concerned, with regard to the occupation. But, even then, for the physical injuries suffered and the disability which he is having, he will have to be granted due compensation for permanent disability, pain and suffering as well as loss of enjoyment of life and loss of amenities of life. The above principle is clear from the judgment we have quoted above.

7. The total compensation granted by the Tribunal is as follows:

| <i>Head under which compensation is claimed</i> | <i>Amount allowed by the Tribunal (Rs.)</i> |
|-------------------------------------------------|---------------------------------------------|
| Loss of earning                                 | 49,381/-                                    |
| Medical Expenses                                | 1,04,625/-                                  |
| Bystander expenses                              | 1,600/-                                     |
| Damage to clothing                              | 250/-                                       |
| Transportation                                  | 15,000/-                                    |
| Pain and suffering                              | 15,000/-                                    |
| Loss of amenity and conveniences/<br>Disability | 50,000/-                                    |
| Any other heads                                 | 15,000/-                                    |
| Total                                           | 2,50,856/-                                  |

7. Here, evidence is there to show that he was having a monthly remuneration of Rs.15,040/- per month.

He was aged 44 years at the time of the accident. Therefore, the multiplier will be 14. There is no dispute regarding the percentage of disability, which is 28% going by Ext.X1. Therefore, the disability compensation will be Rs.15040 x 12 x 14 x 28/100. Rs.7,07,481.68 is the disability compensation to be granted.

8. Accordingly, the award of the Tribunal is modified as follows:

| <i>Head under which compensation is claimed</i> | <i>Amount allowed by the Tribunal (Rs.)</i> | <i>Amount modified by this Court (Rs.)</i> |
|-------------------------------------------------|---------------------------------------------|--------------------------------------------|
| Loss of earning                                 | 49,381/-                                    | 49,381/-                                   |
| Medical Expenses                                | 1,04,625/-                                  | 1,04,625/-                                 |
| Bystander expenses                              | 1,600/-                                     | 1,600/-                                    |
| Damage to clothing                              | 250/-                                       | 250/-                                      |
| Transportation                                  | 15,000/-                                    | 15,000/-                                   |
| Pain and suffering                              | 15,000/-                                    | 15000                                      |
| Loss of amenity and conveniences/<br>Disability | 50,000/-                                    | 7,07,481.68/-                              |
| Any other heads                                 | 15,000/-                                    | 15,000/-                                   |
| <b>Total</b>                                    | <b>2,50,856/-</b>                           | <b>9,08,337.68</b>                         |
| <b>Rounded to</b>                               |                                             | <b>9,08,338/-</b>                          |

(Rupees Nine lakh Eight thousand Three hundred and Thirty Eight only)

9. The total compensation being the same, we award the same, even though the claimant has claimed a lesser amount. In the light of the decision of the apex Court in **Nagappa v. Gurudayal Singh - 2003 (1) KLT 115** and **Rajesh v. Rajbir Singh - 2013 (3) KLT 89**, there will be no restriction for awarding just and fair compensation even though the amount claimed may be lesser than the compensation.

10. The appellant will therefore pay court fee for the amount, after the amount is deposited before the Tribunal by the Insurance Company. The amount can be released from the said amount. The appellant will also be entitled for interest at the rate of 9% for the enhanced amount of compensation. The Insurance Company is directed to deposit the amount of compensation less the amount already deposited before the Tribunal, within a period of three months. Once the deposit is made, the amount will be released to the appellant.

The appeal is allowed accordingly. The parties will suffer their respective costs.

Sd/-  
T.R.RAMACHANDRAN NAIR,  
JUDGE.

Sd/-  
P.V. ASHA,  
JUDGE.

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**P.A. TO JUDGE**

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