

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

MACA.No. 1735 of 2006 ()

AGAINST THE AWARD IN OPMV 1671/1997 of II ADDL. MACT,KOLLAM
DATED 26-10-2005

APPELLANT(S)/PETITIONER:

P.S.AJIKUMAR
IVERKALA WEST NORTH, KUNNATHOOR VILLAGE, KOLLAM.

BY ADV. SRI.B.SURESH KUMAR

RESPONDENT(S):

1. NARAYANAN CHANDH NAG
AYODHYA NAGAR, BERHAMPORE P.S., MURSHIDABAD (DISTRICT)
WEST BENGAL. (DELETED)

2. BISWANATH MANDAL, RAJADHARPARA,
BHATTABATTI P.O., NABA GRAM P.S.
MURSHIDABAD (DISTRICT), WEST BENGAL.

3. UNITED INDIA INSURANCE CO.LTD.,
3/20/AKK, BANERJEE ROAD, (IST FLOOR)
BERHAMPORE P.O., 742101, MURSHIDABAD DISTRICT
WEST BENGAL.

(NAME OF R1 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 1002/2015
DT.17.3.2015)

R,R3 BY ADV. SRI.K.SANDESH RAJA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1735 of 2006

Dated this the 24th day of March, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 25.2.1996. He was travelling in an autorickshaw from 91 BNBSFGD GATE, Berthampoor through the Lalbagh Berthamboor Public road, when a bus which came in the opposite direction, hit the autorickshaw causing very severe injuries to him. He was taken to District Hospital, Berthampoor. After three days, he was taken to BSF Frontier Hospital, South Bengal. Thereafter he was referred to Behala Balamanda Brehmachari Hospital, Calcutta. He underwent a series of surgeries, bone grafting, natural fixation, etc. and got discharged on 27.1.1997. After inpatient treatment he had to undertake outpatient treatment for a long period.

2. The disability of the appellant was assessed as 45%. The claim

petition was filed seeking compensation to the tune of Rs.7 lakhs. The Tribunal awarded a sum of Rs.2,16,560/- along with interest at the rate of 9% per annum. This appeal is filed seeking enhancement of compensation, aggrieved by the inadequacy of various heads of compensation.

3. We heard learned counsel appearing on either side.

4. The appellant was employed as Constable in B.S.F. His right femur and the bone below his right knee were fractured. His right ankle was also injured.

5. Before the Tribunal, evidence was adduced producing documents Exts.A1 to A27 and by examining the claimant as P.W.1. The Tribunal found that he underwent treatment for a period of 352 days as inpatient during the period from 25.2.1996 to 2.7.1997, in various hospitals as seen from the certificates Exts.P5, P6 and P7 issued from District Hospital, Berampur, Staff Hospital, Calcutta and Behala Balananda Brehmachari Hospital Research Centre. The particulars of treatment as explained by the Tribunal in paragraph 10 of the award is as follows:

“On 15.3.1996 ORIF (open Reduction (natural fixation) with

bone grafting was done. Ext.P8 discharge summary slip issued from the BSF Hospital shows that he was admitted on 28.2.1996 and discharged on 27.10.97 F.N. (ie to say for 101 days from 19.10.96). Ext.A9 certificate issued by Dr.S. Chakravarthy shows that the petitioner was admitted on 28.2.96 in B.S.F. Reserve bed. Ext.A10 certificate issued from B.B.B. Hospital describes the injury sustained by the petitioner and the treatment given to him till 15.9.96. Ext.A11, 12 and 13 are outdoor certificate issued to the petitioner. Ext.A14 discharge certificate issued from the BSF Hospital shows that he was treated as inpatient for 9 days from 24.6.97 to 2.7.97. He was advised to walk with one crutch. Ext.A17 discharge certificate issued from the Medical College Hospital, Alleppey shows that he was treated as inpatient for 15 days. Ext.A8 O.P. slip issued from BSF Hospital shows that the patient was suffering from pain in the right thigh, difficulty in walking without crutches and he was referred to ortho. M.S.M. Hospital for specialist opinion. Ext.A19 disability certificate shows that the petitioner has 45% disability.”

His disability was assessed as 45%. The Medical Board of BSF Hospital as per Ext.A20 certificate also, certified that his disability was 45% and placed him under Low Medical Category C.E.E. (T). and found him unfit to remain in the category AYE.

6. The appellant was drawing a salary of Rs.3,485/- as on

January, 1996, as seen from Ext.A22 salary certificate. The Tribunal found that the appellant was a talented sportsman actively involved in weightlifting, volley ball, basket ball, etc. He was aged 26 years at the time of accident. It was found that he would have been promoted to the rank of Head Constable immediately and there would have been increase of Rs.200/- per month in his pay. The Tribunal awarded compensation in the following manner:

<i>Head of claim</i>	<i>amount awarded(Rs)</i>
Loss of income	67200
Bystander expenses	72400
Transport to hospital	4000
Extra nourishment	5000
Pain and suffering	40000
Permanent disability	12960
Loss of amenities and enjoyment in life	15000
Total	216560

Even though a sum of Rs.50,000/- was claimed towards pain and suffering, the Tribunal awarded only a sum of Rs.40,000/- only under this head. Having regard to the nature of injuries suffered and the prolonged treatment in which various surgical procedures were involved, we are of the view that a sum of Rs.50,000/- should have been awarded towards compensation for pain and suffering.

Accordingly, we enhance the amount under the said head to Rs.50000/-. The Tribunal assessed compensation towards permanent disability reckoning the multiplier of 8, considering the fact that he can continue in service upto the age of 58 years and thus the compensation under this head was worked out as Rs.12,960/-. But the method adopted by the Tribunal is not correct. The compensation under this head should have been arrived at in accordance with his salary as on the date of the accident and with reference to his age (26) and percentage of disability (45%). As the disability was found to be 45%, the compensation for permanent disability has to be assessed at Rs.5,97,434/- (Rs.6508 x 12 x 17 x 45/100)

6. The Tribunal awarded a sum of Rs.15,000/- towards compensation for loss of amenities and enjoyment of life. In view of the fact that the appellant has to suffer the disability all along during his lifetime and will not be in a position to enjoy all the amenities in life, we enhance the compensation for loss of amenities and enjoyment of life to Rs.50,000/-.

Accordingly, the award passed by the Tribunal is modified as follows:

<i>Head of claim</i>	<i>amount awarded by the Tribunal(Rs)</i>	<i>Modified award passed by this Court</i>
Loss of income	67200	67200
Bystander expenses	72400	72400
Transport to hospital	4000	4000
Extra nourishment	5000	5000
Pain and suffering	40000	50000
Permanent disability	12960	597434
Loss of amenities and enjoyment in life	15000	50000
Total	216560	846034

(Rupees Eight lakhs forty-six thousand three hundred and thirty four only)

The insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

kav/