

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

MACA.No. 1786 of 2005 ()

AGAINST THE AWARD IN OPMV 3985/1996 of M.A.C.T., ERNAKULAM
DATED 15-06-2004

APPELLANT(S)/APPELLANT:

C.I.BENNY
CHITTHILAPPILLY HOUSE, MULLASSERY P.O.
THRISSUR AND NOW RESIDING AT DOOR NO.35/235
AUTOMOBILE ROAD, PALARIVATTOM, COCHIN-25.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT(S):RESPONDENTS

1. P.SUBBUSAMY
MUTHAIYANAGAR EXTENSION, POANUR, COIMBATORE-23. (DELETED)

2. UNITED INDIA INSURANCE CO. LTD.,
M.G.ROAD, COCHIN-16.

3. C.SIVASANKARAN, KAVUNGAL HOUSE,
MANNUTHY, TRICHUR. (DELETED)

4. SUNIL KUMAR.C.G., CHEEROTH HOUSE,
MULLASSERY P.O.

5. THE NEW INDIA ASSURANCE CO. LTD.,
M.G.ROAD, COCHIN-11.

(R1 & R3 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 1287/2015
DT.7.4.2015)

R, BY ADV. SRI.JOHN JOSEPH VETTIKAD
R,R5 BY ADV. SRI.M.JACOB MURICKAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1786 of 2005

Dated this the 3rd day of June, 2015

JUDGMENT

Ramachandran Nair, J.

In an accident which occurred on 12.4.1996, the appellant who was aged 21 year at the time of accident, sustained serious injuries. He claimed an amount of Rs.7 Lakhs in total and the Tribunal awarded only Rs.1,88,000/-.

2. The appellant is mainly challenging the quantum of compensation. It is submitted that the amount awarded is not commensurate with the injuries sustained which were of serious nature, the period of treatment, the treatment undertaken in three different hospitals at Coimbatore and the permanent disability sustained by him to the tune of 35%, that too certified by a competent Medical Board.

3. The appellant was a pillion rider in a motor cycle bearing Reg. No. KLZ 2555 which was proceeding along Avanasi road. When it

reached P.S.G. Tech Road junction, it was hit by a DCM Toyota bearing Reg. No.TAT 1049. He was immediately taken to P.S.G. Hospital, Coimbatore and after first aid he was admitted in the Government Hospital. For expert treatment he was referred to Sree Ramakrishna Hospital and again to Kovai Medical Centre.

4. Learned counsel for the appellant explained the details of the injuries and the treatment undertaken by him by referring to the various certificates. The following are the injuries noted in paragraph 9 of the award:

- “1. Abrasions over left side of face;
 - 2. Fracture shaft of femur right lower limb;
 - 3. Fracture mandible right side and head injury.
- X-ray skull <1a - fracture right mandible
X-ray ® thigh - fracture shaft of femur ®.”

It is clear from Ext.A6 wound certificate issued from P.S.G. Hospital that there was fracture shaft of femur right lower limb. Thereafter, he was admitted in Sree Ramakrishna Hospital where he was treated as inpatient till 22.4.1996. He was diagnosed for head injury as well as for fracture of right femur, right patella and right mandible. The

injuries are supported by Ext.A8 discharge summary issued from the said hospital and the head injury is revealed from Ext.A9 scan report.

5. In Kovai Medical Centre he was diagnosed for III nerve palsy and fracture of first rib ®. These are evident from Ext.A11 series discharge summaries issued from the said hospital. For mandible fracture, LMF arch bar fixation was done and for femur fracture interlocking K-nailing was also done. This was removed on 20.6.1996. He was treated as inpatient for a period of 26 days in these hospitals. He continued the treatment for a period of one year.

6. Going by the findings of the Tribunal, it is seen that the appellant was advised to have crutches for a period of one year and the Tribunal has recorded that he could not pursue his career on account of the unfortunate accident.

7. With regard to the educational qualifications of the appellant, it is pointed out by the learned counsel for the appellant that the appellant was about to join for Engineering course in sports quota which is supported by Ext.A18 memo issued by Kerala Sports Council regarding admission to Engineering Degree course 1996-1997 under

sports quota. Ext.A19 is the certificate issued by Caneta India Institutional Co-operation Project Continuing Education Cell which mentions that he had attended the Computer Maintenance Course. Ext.A20 is produced to show the participation of the appellant in 35th National School Games, 1990 and Ext.A21 is another certificate to show that he was a sportsman.

8. While making submissions on the non consideration of the percentage of disability, learned counsel for the appellant submitted that the competent Medical Board of District Hospital, Ernakulam had assessed the disability. We have gone through the certificate as well as the findings of the Tribunal.

9. Learned counsel for the insurance company submitted that the view taken by the Tribunal is a reasonable one.

10. We find from the discussion of evidence that the Tribunal reduced the percentage of disability as certified by the Medical Board, on the reason that it is not clear that the appellant was under treatment for any eye trouble or for any neurological problem. In the certificate issued by the Medical Board, the disability has been calculated in the

following manner:

“1. Terminal painful restriction of ® knee with inability to sit in squatting position and difficulty in climbing steps with pain or weight bearing on the affected side;

2. Subluxation of mandibular joint on opening the mouth (sequele of # mandible)

3. Diplopia (sequele of head injury due to partial 3rd nerve palsy) with semidilated pupil and double elevation palsy.

We have perused the medical records and recent X-Ray of ® knee and femur and the disability has assessed as follows and is as per MEBRIDE's Scale.

Painful restriction of ® knee with inability)	)(15%
to sit in squatting position and pain on	
weight bearing on the affected side	

Partial 3 rd nerve palsy with semidilated	)(20%
pupil and double elevation palsy and	
diplopia	

The total permanent partial physical disability assessed amounts to 35% (thirty five percent only)”

11. We have gone through the certificate issued by Kovai Medical Centre Hospital, which was made available by the learned counsel for the appellant. The final diagnosis recorded therein is as follows:

“# Mandible, # Right femur, #Inferior pole right patella

Head injury with IIIN Palsy”

Therefore, the certificate issued by the Medical Board is supported by the treatment undertaken in Kovai Medical Centre Hospital. The Medical Board's opinion is that Diplopia is a sequel to head injury due to partial 3rd nerve palsy. In that view of the matter, we adopt 35% as permanent disability.

12. The appellant was a student at the time of accident and was seeking entry into an Engineering course. Of course, the Tribunal has fixed notional income at Rs.1,500/- per month which according to the learned counsel for the insurance company, is a reasonable one. According to us, being a student aged 21 at the time of accident, a reasonable amount, viz. at least Rs.2,000/- can be adopted for the purpose of awarding compensation.

13. As far as the result of the injuries sustained is concerned, it is clear that there are loss of amenities and convenience in life and apart from that, he is justified in seeking compensation for disfigurement, loss of studies and loss of marriage prospects. It is evident that he has lost one year of career which is the finding by the Tribunal also.

14. For pain and suffering adequate compensation will have to be granted in tune with the seriousness of the injuries and the treatments undertaken by him. We are of the view that the amount awarded by the Tribunal at Rs.30,000/- is hence not a reasonable one and it requires enhancement.

We therefore, refix the compensation in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Transport to hospital	2000	2000
Damage to clothing	500	500
Bystander's expenses	6000	6000
Extra nourishment	2000	2000
Medical expenses	42000	42000
Partial loss of earnings for one year	18000	24000
Pain and suffering	30000	50000
Permanent disability	67500	151200
Loss of amenities	15000	30000
Disfigurement, loss of studies, loss of prospects of marriage		30000
Total		337700

(Rupees Three Lakhs thirty-seven thousand and seven hundred only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition and 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 and on such deposit, the appellant is permitted to withdraw the same.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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