

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

MACA.No. 1851 of 2006 ()

AGAINST THE AWARD IN OPMV 1663/2000 of M.A.C.T., THALASSERY DATED 22-03-2006

APPELLANT(S)/PETITIONER::

U.K. RAGHOOTHAMAN,
S/O.KUNHIKANNAN NAMBIAR, AGED 40 YEARS
OTTAPURAYIL HOUSE, MATTANNOOR P.O., KANNUR.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S) :

THE ORIENTAL INSURANCE COMPANY LTD.,
KANNUR.

R,R1 BY ADV. SRI.TITUS MANI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1851 of 2006

Dated this the 28th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant/injured is the appellant herein, aggrieved by the inadequacy of compensation. The appellant sustained injuries in an accident while travelling in an autorickshaw on 1.4.2000. The vehicle went out of control of the driver and it capsized.

2. The injuries sustained by the appellant are: (i) Fracture to left femur middle 1/3rd; (ii) Compound comminuted fracture to both bones of left leg; (iii) Degloving injury left dorsum of the foot; and (iv) Lacerated wound left forearm ulna aspect. Minor injuries were also sustained.

3. We heard learned counsel for the appellant and learned counsel for the insurance company.

4. Learned counsel for the appellant mainly contended that the

hospitalisation as inpatient was for a period of 62 days. He was put in plaster cast and several months were taken for recovery. It is submitted that the appellant was examined as P.W.1 and the doctor who issued the disability certificate, was examined as P.W.2. 9% is the permanent disability that is assessed by the doctor. The disability certificate will show that there is partial ankylosis of left ankle joint. It is also submitted by the learned counsel for the appellant that there is shortening of one leg. Being an agriculturist, the same will result in functional disability. The Tribunal has reduced the disability to 3% as whole body disability and assessed the compensation accordingly. It is also submitted that what is claimed as monthly income was Rs.5,000/- which was also reduced to Rs.2,000/- arbitrarily.

5. The appellant explained in his evidence the difficulty he has, in walking. Learned counsel therefore submitted that the compensation awarded is thoroughly inadequate.

6. Learned counsel for the insurance company submitted that the assessment of disability by the Tribunal is in accordance with the well settled principles. It is further pointed out that the compensation

awarded is just and fair.

7. We find from the discussion of evidence in paragraph 8 that the appellant was treated in A.K.G. Hospital, Kannur initially as inpatient from 1.4.2000 to 5.5.2000. Closed interlocking and nailing of left femur was done on 11.4.2000 and he was discharged on 5.5.2000. Thereafter, he had to appear for review on 10.5.2000, 17.5.2000, 7.6.2000, 21.6.2000 and 5.7.2000. Again he was admitted from 26.7.2000 to 16.8.2000. This was due to non union of the fracture of left tibia. Interlocking and nailing of the tibia was done on 29.7.2000. Femur dynamisation done and sutures removed on 16.8.2000. Thereafter, there were three reviews on 23.8.2000, 10.9.2000 and 28.9.2000. According to the appellant, he was again admitted in Koyili Hospital, Kannur from 19.9.2003 to 22.9.2003 for removal of implant which was done on 19.9.2003. Thereafter plaster cast was applied for two months, according to him.

8. The appellant attributes shortening of left leg, scar and disfiguration of his left leg apart from stiffness and difficulty to walk.

9. The Tribunal has granted compensation as seen from the table

in paragraph 10 which we reproduce below:

<i>Head of claim</i>	<i>Amount awarded (Rs)</i>
Loss of earning	8000
Transportation expenses	2000
Medical expenses	69210
Bystanders expenses	6200
Extra nourishment	2000
Pain and suffering	12000
Loss of earning capacity	10800
Total	110210

We find that the appellant would have travelled at least ten times for treatment as well as for review. But only an amount of Rs.2,000/- was granted as transportation expenses which we enhance to Rs.5,000/-. For medical expenses, already an amount of Rs.69,210/- was granted by the Tribunal. Towards bystander's expenses an amount of Rs.6,200/- has been granted which we find as reasonable. But as far as extra nourishment is concerned, we grant a further amount of Rs.2,000/-, making it to Rs.4,000/-.

10. As far as compensation for pain and suffering is concerned, the Tribunal has assessed the same at Rs.12,000/-. It is seen that the appellant has sustained two major fractures. He had to undergo various

treatment procedures including closed interlocking, nailing of left femur, wound debridement. Interlocking and nailing of the tibia was done on 29.7.2000 and he was put in plaster cast. The last of the review, going by the details available in paragraph 8, is on 28.9.2000, which means that he was continuously attending the hospital for a period of five months. It is seen from his evidence that thereafter also he had to take rest for a couple of months also. Therefore, as far as pain and suffering is concerned, we find that he has got a reasonable case for enhancement. We enhance the same to Rs.35,000/- in the light of the various factors as pointed out above. The monthly income assessed is only at Rs.2,000/-. The appellant is an agriculturist by profession. Of course, the question is whether he has sustained any loss of earning power as a result of the disability. 9% is the disability assessed by the doctor. The evidence of the doctor as P.W.2 is also material. Going by the evidence and Ext.A4 certificate, he is suffering from traumatic partial ankylosis of left ankle joint. Therefore, it is evident that the same will affect his occupation and functions as an agriculturist and he will not be able to perform his activities and

indulge in hard labour as before. But the Tribunal has chosen to reduce the disability to 3%, viz. whole body disability. According to us, the true method which should have been adopted by the Tribunal is to assess the functional disability. Of course, the functional disability can be equal to the disability that is reported in the certificate also. Going by the evidence of the doctor as well as P.W.1, we will be justified in assessing the functional disability as 9%. Therefore, the appellant will be entitled for compensation accordingly. Even though other evidence is not available to show the monthly income at Rs.5,000/-, we are of the view that a reasonable amount, viz. Rs.3,500/- can be adopted for assessing loss of earning power. Towards compensation for loss of earning power, the amount will be Rs.52,920/- ($\text{Rs.3500} \times 12 \times 14 \times \frac{9}{100}$). Towards compensation for partial loss of earnings also, he is entitled for an enhancement, viz. At the rate of Rs.3,500/- and the amount under this head will be Rs.24,500/- ($\text{Rs.3,500/-} \times 7 \text{ months}$). Accordingly, the total compensation is refixed in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	Modified award passed by this Court (Rs)
Loss of earning	8000	24500
Transportation expenses	2000	5000
Medical expenses	69210	69210
Bystanders expenses	6200	6200
Extra nourishment	2000	4000
Pain and suffering	12000	35000
Loss of earning capacity	10800	52920
Total	110210	196830 (rounded off to 196800)

(Rupees One lakh ninety-six thousand and eight hundred only)

The appellant is entitled to get interest at 9% for the enhanced amount of compensation. 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. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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