

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 FEBRUARY 2015/5TH PHALGUNA, 1936

MACA.No. 1925 of 2006 ()

AGAINST THE AWARD DATED 18/4/2006 IN OPMV 711/1999 of
MACT, KALPETTA, WAYANAD)

APPELLANT(S)/PETITIONER:

MALIYAKKAL SAITHALAVI, AGED 47 YEARS,
S/O.MUHAMMED ALI, MALIYAKKAL HOUSE, MUNDERI,
KOOLIMOOLA, KALPETTA POST, WAYANAD DISTRICT.

BY ADVS.SRI.G.BALAMURALEEDHARAN (PARAVUR)
SRI.MATHEWS V.JACOB (PARAVUR)
SRI.N.T.NANDAKUMAR (PARAVUR)

RESPONDENT(S)/RESPONDENTS:

1. UNNINARAYANAN, AGED 37 YEARS,
S/O.RAMAKRISHNA KURUP, SWOROO BHAVAN, CHUZHALI,
KALPETTA POST, KALPETTA AMSOM, WAYANAD DISTRICT.

2. RAMAKRISHNAN, AGED 47 YEARS,
S/O.APPUKUTTAN, KALATHIL HOUSE, EMILY,
KALPETTA, KALPETTA AMSOM, VYTHIRI TALUK
WAYANAD DISTRICT.

3. THE NEW INDIA ASSURANCE CO. LTD.,
M.G.T.BUILDING, KALPETA NORTH POST, WAYANAD DISTRICT.

4. E.K.ABOOBACKER HAJI,
TRANSPORT CONTRACTOR, KODUVALLY POST, KOZHIKODE DIST. (DELETED)

(R4 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
PETITIOER/APPELLANT VIDE ORDER DATED 26/9/2013 IN I.A. 2515/2013 IN
MACA NO.1925/2006)

R,R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

MACA. No. 1925 OF 2006

Dated this the 24th day of February, 2015

JUDGMENT

Ramachandran Nair,J.

This appeal is filed by the claimant seeking enhancement of the compensation. The accident occurred on 23/10/2010. While the appellant was walking along the side of the road, the offending vehicle-a lorry bearing registration number KRZ 2377 hit the appellant and he sustained injuries.

2. The total compensation awarded by the Tribunal is Rs.44,900/- with interest at 6% p.a. The learned counsel for the appellant submitted that the appellant had sustained 5% disability. He is a coolie by profession. The Tribunal has adopted his monthly income only at 1,500/- against his claim for Rs.3,500/- He was aged 40 years at the time of the accident. Apart from that, it is submitted that, no amount has been granted towards loss of amenities. For pain and suffering only

Rs. 20,000/- has been granted.

3. What is clear from the evidence is that the appellant was admitted in the Leo Hospital and he had sustained right ankle fracture dislocation. Ext.A5 is the treatment certificate. As per Ext.A5, he had undergone surgery and was discharged from the hospital on 6/11/1999. Ext.A6 is the disability certificate issued from that hospital, which shows that the appellant is assessed to have 20% permanent disability to the lower limb. The Tribunal accepted Ext.C1 certificate issued from the Medical Board, Mananthavady, wherein the disability assessed is 5%. The same is described as partial ankylosis of right ankle with 40 planter flexion and 9 dorsi flexion.

4. We find no reason to disagree with the Tribunal in rejecting Ext.A6 and in accepting Ext.C1. As far as the monthly income is concerned, we are of the view that Rs.1,500/- adopted by the Tribunal as monthly income of the appellant is too low. Hence, we adopt the monthly income at the reasonable rate of Rs.2,500/- being a coolii worker. As per the decision in **Sarla verma v. Delhi Transport Corporation {2010 (2) KLT 82**

(SC)} 15 is to be adopted as a multiplier. Therefore, we award **Rs.22,500/-** as compensation towards permanent disability.

5. We also award **Rs.20,000/-** as compensation towards pain and sufferings. Towards Loss of earnings, we grant Rs.2,500/-. Considering the partial ankylosis of right ankle with 40 planter flexion and 9 dorsi flexion undergone by the appellant, we award Rs. **25,000/-** towards loss of amenities and loss of enjoyment of life. We also grant **Rs.1000/-** towards expenses for transportation, **Rs.2000/-** for extra nourishment and **Rs.2000/-** for by stander's expenses. Accordingly, we modify the award of the Tribunal, details of which are given in the following table:

<i>Sl.No.</i>	<i>Head of the Claim</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Amount awarded in this Court (in Rupees)</i>
1	Permanent disability	14,400/-	22,500/-
2	Loss of earnings	200/-	2,500/-
3	Transportation charges	300/-	1,000/-
4	Pain & sufferings	12,000/-	20,000/-
5	Medical Expenses	18,000/-	18,000/-
6	Loss of Amenities	-	25,000/-
7	Extra nourishment	-	2,000/-

<i>Sl.No.</i>	<i>Head of the Claim</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Amount awarded in this Court (in Rupees)</i>
8	Bystander's expenses	-	2,000/-
	Total		93,000/-(Rupees Ninety Three Thousand only)

Thus, the appellant will be entitled for a total compensation of Rs.93,000/-(Rupees Ninety Three Thousand only). Enhanced compensation amount will carry interest at the rate of 9% p.a.from the date of the petition.

The appeal stands allowed as above. Parties will suffer their respective costs in the appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR,
Judge.**

Sd/-

**P.V.ASHA,
Judge.**

dpk

/True copy/ PS to Judge.

