

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

**PRESENT:**

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR**

**&**

**THE HONOURABLE SMT. JUSTICE P.VASHA**

**TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936**

**MACA.No. 1544 of 2012 ()**  
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**AGAINST THE AWARD IN OPMV 710/2006 of MACT, ALAPPUZHA  
DATED 11-10-2011**

**APPELLANT/PETITIONER:**  
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**BIJU,  
S/O.RAJAPPAN, SWAMI VELI, CHARAMANGALAM,  
MAYITHARA P.O., CHERTHALA.**

**BY ADV. SRI.T.V.GEORGE**

**RESPONDENTS/RESPONDENTS:**  
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- 1. AJITH DAS  
S/O.RAMANDAS, MANIBEN, C.M.C.IV  
CHERTHALA.P.O., PIN -688524.**
- 2. RAJESH, S/O.RAJAPPAN,  
CHITTEZHATHU, THANNEERMUKKOM, CHERTHALA P.O.**
- 3. UNITED INDIA INSURANCE COMPANY LTD.  
REPRESENTED BY DIVISIONAL MANAGER, ALAPPUZHA P.O.  
PIN- 688001.**

**R3 BY ADV. SMT.T.C.SOWMIAVATHY  
R1-R2 BY ADV. SRI.T.J.LAKSHMANAN IYER  
R BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

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

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**M.A.C.A.No.1544 OF 2012**  
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**Dated this the 17<sup>th</sup> day of March, 2015**

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

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**Asha, J.**

The appellant met with an accident on 29.4.2006 on being hit by a jeep while he was riding a bicycle. He sustained very severe injuries and was taken to the hospital immediately. After inpatient treatment for a period of 11 days, the disability was assessed and found as 20%.

2. The claim petition was filed before the Tribunal seeking compensation to the tune of Rs.2,62,750/-, claiming that the the appellant was working as a labourer and earning a monthly income at the rate of Rs.3,000/-. The Tribunal passed the award granting compensation of Rs. 1,45,286/-.

3. This appeal is filed seeking enhancement of compensation pointing out that the Tribunal has not awarded any amount towards loss of amenities and that the amount awarded under various heads are inadequate.

4. Before the Tribunal, the doctor, who issued the disability certificate, was examined as PW1. More over, the Tribunal also had occasion to directly observed the disability of the appellant. The injuries sustained on him in the accident were as follows:

- “1. Type III compound fracture both bones (L) leg.*
- 2. Multiple abrasion over (L) leg.”*

As per the deposition of PW1, the appellant incurred the following disabilities.

*“1. He walks with a short limb gait as there is 3cms shortening of (L) leg due to malunion of fracture tibia with anterolateral angulation.*

*2. There are chronic discharging sinuses around the distal 3<sup>rd</sup> of (L) leg due to underlying chronic osteomyelitis of tibia.*

*3. Partial ankylosis of (L) knee with 60° limitation of knee flexion. Available flexion is associated with pain and crepitus due to patellofemoral arthritis. Dorsiflexion of (L) ankle is 15° and plantar flexion is 10°.*

*4. Difficulty in squatting, sitting cross legged, climbing up and down.”*

5. Reckoning the monthly income at the rate of Rs.3,000/-, the Tribunal awarded a sum of Rs.1,08,000/- towards permanent disability. The learned counsel for the appellant submits that the Tribunal did not reckon the future prospects of income, even though a reasonable amount alone was claimed as monthly income. We find that the wages of a labourer have been reckoned by the Apex court as Rs.4,500/- for assessing compensation, in respect of accidents occurred in 2004, in the judgment in **Syed Sadiq v. Divisional Manager, United India Insurance Company** [AIR 2014 SC 1052], **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd.** [2011(13) SCC 236] etc. Having regard to the wage structure prevailing at the relevant time, we are of the view that the income for the purpose of compensation towards disability can be fixed as Rs.4,000/- per month. Therefore, the compensation under the head of permanent disability will come to Rs.1,44,000/- (4000x12x15x20/100). It is seen that the appellant would have experienced serious discomfort and inconvenience on account of very serious injuries sustained on him, which he continues to suffer. The Tribunal has awarded a sum of

Rs.10,000/- towards pain and suffering. Under the circumstances of this case, we enhance the same to Rs.40,000/-. Similarly, the appellant will not be able to enjoy the normal amenities of life on account of the disability incurred. Therefore, a sum of Rs.50,000/- will be reasonable towards loss of amenities and loss of enjoyment of life, which we grant. The Tribunal has awarded Rs.12,000/- towards loss of earnings for a period of 4 months. We are of the view that the appellant would have been unable to undertake any work at least for a period of five months, in view of the nature of injuries sustained by him. He will be entitled to a sum of Rs.15,000/- towards loss of earnings. The appellant had to undergo inpatient treatment for a period of 11 days. The Tribunal has not awarded any amount towards bystander's expenses. The accident occurred in the year 2006; we award a sum of Rs.2,750/- towards the same at the rate of Rs.250/- per day.

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

| <b>Head</b>                                     | <b>Amount<br/>awarded by<br/>the Tribunal</b> | <b>Amount<br/>modified</b> |
|-------------------------------------------------|-----------------------------------------------|----------------------------|
| Transportation charges                          | 1000                                          | 1000                       |
| Damage to clothing                              | 250                                           | 250                        |
| Damage to bicycle                               | 200                                           | 200                        |
| Loss of earnings                                | 12000                                         | 15000                      |
| Extra nourishment                               | 500                                           | 500                        |
| Cost of medicine                                | 13336                                         | 13366                      |
| Compensation for permanent disability           | 108000                                        | 144000                     |
| Compensation for pain and suffering             | 10000                                         | 40000                      |
| Loss of amenities and loss of enjoyment of life | -                                             | 50000                      |
| Bystander's expenses                            | -                                             | 2750                       |
| <b>Total</b>                                    | <b>145286</b>                                 | <b>267066</b>              |

7. The total compensation will come to Rs.2,67,066/-. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition.

8. The Insurance Company shall pay the amount, less any amount already deposited as per the award impugned, within a period of three months.

Appeal is allowed accordingly and the parties shall suffer their respective costs.

**sd/-**

**T.R.RAMACHANDRAN NAIR,  
JUDGE.**

**sd/-**

**P.V.ASHA, JUDGE.**

Ps/18/3/2015

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PA to Judge