

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

MACA.No. 1585 of 2012 ()

**AGAINST THE AWARD IN OP(MV) 198/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
MUVATTUPUZHA DATED 12-09-2011**

APPELLANT:

**ALIAS.K.SIMON
S/O. SIMON, RESIDING AT KOCHUPARAMBIL HOSUE, PINDIMANA
MAILIPARA, KOTHAMANGALAM.**

**BY ADVS.SMT.ANEY PAUL
SRI.PHILIP J.VETTICKATTU**

RESPONDENTS:

- 1. JOBY
S/O. JOHN PARUTHIPPILLIL HOUSE, THALAKODE.P.O.
KAVALANGADU, KOTHAMANGALAM.**
- 2. ABIN
S/O. PRABHAKARAN, PUTHENPURA HOSUE
PINDIMANA, ALUMCHUVADU, KOTHAMANGALAM.**
- 3. THE BRANCH MANAGER
THE ORIENTAL INSURANCE CO. LTD. EBENEZER GARDEN EDAPPALLY
KOCHI-24.**

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
31-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.1585 of 2012

Dated this the 31st day of August, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the award made in O.P.(M.V.)No.198/2007 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha. The injured is the appellant.

2. The relevant facts are as follows:

On 6.2.2006 at about 10.30. p.m. while the appellant was driving a jeep bearing registration No.KRO-1115, an autorickshaw bearing registration No.KL-17-C-5309 came from the opposite side and hit against the vehicle driven by the appellant and in that accident the appellant sustained serious injuries. His right arm was amputated. It is the case of the appellant that the accident occurred solely due to the rash and negligent driving of the offending autorickshaw by its driver and he moved a claim petition before the Tribunal arraying the registered owner as respondent No.1, driver as

respondent No.2 and the insurer as respondent No.3. The Tribunal awarded a total compensation of Rs.5,07,193/-. Aggrieved by the quantum of compensation awarded, this appeal filed.

3. When the appeal came up for hearing, the counsel for the appellant submitted before us that the appellant was a contractor by profession. His income was more than Rs.7,500/- per month. It is the submission that it can be seen that he was driving the jeep when the accident occurred. Apart from the same, the appellant was aged only 33 years. The Tribunal considered only a notional income of Rs.3,000/- per month for assessment purposes. It is the submission that the compensation assessed is on a lower side and a re-fixation is warranted.

4. We heard the counsel for the Insurance Company, who submitted before us that no reliable evidence adduced to show the income of the injured. It is true that the accident occurred while the appellant was driving the vehicle. But the case is that the appellant is a contractor by profession and the accident or injury will not affect his

income. Under such circumstances, the Tribunal correctly adopted an income of Rs.3,000/- and assessed the compensation.

5. After considering the submissions and also considering the fact that the appellant was a licensed driver and as well as his claim is that he is a contractor by profession and also considering the fact that the accident occurred in the year 2006, we feel that it will be only just and proper to adopt an income of Rs.5,000/- especially when a casual labour of Kerala can easily earn Rs.5,000/- during 2006 period. In this case, it can be seen that the right forearm of the appellant was amputated that also above the elbow. The Tribunal correctly adopted the disability percentage of 70 for calculation purpose. While adopting the same, the Tribunal referred the schedule attached to the Workmen's Compensation Act also. In this case, the Tribunal only awarded a sum of Rs.15,000/- towards pain and suffering. Here is a case where there is amputation of a limb. Apart from the same, in a case of amputation there may be pain and suffering even after healing the wound.

6. It is the case of the appellant that he was in the hospital for six days. A bystander for the said period will be necessary. Similarly he is entitled for compensation towards extra nourishment, general expenses etc. The Tribunal awarded only Rs.12,000/- towards loss of amenities. As already stated, this is a case of amputation of a limb. That also right forearm. The compensation awarded by the Tribunal on this head is on a lower side. The monthly income of the appellant is considered as Rs.5,000/-. Considering his age, the multiplier available will be 16. When 70% disability is considered as stated above, the loss of income due to permanent disability will be Rs.6,72,000/-. Some modification on the quantum is necessary on other heads also. Thus the just compensation is re-fixed as follows:

Head of claim	Amount re-fixed in Rs.
Loss of earnings(3 months)	3x5000 15000
Transportation, extra nourishment	7000
Pain and suffering	45000

Head of claim	Amount re-fixed in Rs.
Permanent disability	5000x12x16x70/100 672000
Medical	60993
Loss of amenities	50000
Total	849993 Rounded off to Rs. 8,50,000

Thus the appellant is entitled to Rs.8,50,000/- (Rupees eight lakhs fifty thousand only). The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellant will be entitled for the release of the amount.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

SHG/

P.A. TO JUDGE