

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

MACA.No. 2123 of 2005 ()

AGAINST THE AWARD IN OPMV 1268/1999 of MACT ALAPPUZHA DATED 21-03-2005
APPELLANT/PETITIONER:

JOHN

CMC-26, CHERTHALA.P.O., REPRESENTED BY HIS
NEXT FRIEND AND WIFE PHILOMINA, W/O.JOHN MATHEW
MAVUNKAL HOUSE, CMC-26, CHERTHALA.P.O
ALAPPUZHA, DISTRICT.

BY ADV. SMT.K.N.RAJANI

RESPONDENT(S) :

1. MANAGER

M/S.HOPE TRANSPORTS PVT. LTD., ZEEMAZ BUILDING
KALPATTA NORTH, WAYANAD.

2. S.VASUDEVAN, S/O.SELVA GANAPATHY,

MICA MINES VEEDU, CHERAPADY.P.O, NILAGIRI DISTRICT
TAMILNADU. (DELETED)

3. THE UNITED INDIA INSURANCE COMPANY LTD.,

BRANCH OFFICE, P.B.NO.41, MAIN ROAD
KALPATTA, WAYANAD DISTRICT.

(R2 DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER
ORDER DATED 11.12.2013 IN IA 3327/2013)

R3 BY ADV. SRI.MATHEWS JACOB (SR.)

R3 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2123 of 2005

Dated this the 30th day of March, 2015

JUDGMENT

Asha, J.

This appeal is filed by the appellant through his wife as next friend, as he is totally incapacitated on account of the accident.

2. The appellant got injured in a motor vehicle accident which occurred on 29.7.1999. He was knocked down from his bicycle by a lorry, causing very serious injuries. He was taken to K.V.M. Hospital, Cherthala and referred to Medical Trust Hospital, Ernakulam. After inpatient treatment for one year there, he continued to be in a vegetative stage and his disability was certified as 80%.

3. According to the learned counsel for the appellant, the claim petition was filed seeking compensation to the tune of Rs.15 Lakhs. The Tribunal awarded a sum of Rs.5,93,921/- along with interest at 6% per annum. This appeal is filed seeking enhancement of compensation.

4. We heard learned counsel for the appellant and

learned Senior Counsel for the insurance company.

5. The appellant was working as an electrician. It was claimed that he was earning a sum of Rs.72,000/- yearly, on the strength of Ext.A18 certificate. The Tribunal reckoned his income as Rs.2,000/- per month. The appellant's wife got herself examined as PW1 and explained the injuries suffered, treatment undergone and the difficulties experienced by the appellant. The injuries sustained were : EDH tempero parietal region (2) ® temporal contusion (3) fracture ® temporal bone and brain oedemma (4) Swelling ® tempero parietal region (5) Swelling ® mandibular region (6) lacerated wound ® zygema (7) lacerated wound ® shoulder with aberrations (8) lacerated wound ® wrist and (9) aberasion ® side of chest. Due to the head injury he was unconscious throughout. From 29.7.1999 to 20.7.2000 he was under treatment in Medical Trust Hospital. From the bills produced, it is seen that a sum of Rs.2,75,000/- was incurred for the treatment there. He was in intensive care unit, under the help of ventilator for a period of six months. After the treatment in Medical Trust Hospital for one year, he continued treatment for another ten

months in Consultancy Hospital, Kochi. He required the help of two persons for his day today affairs; he was unable to attend to any of his personal needs without the help of others. The Doctor who is the chief of Neurology Department of Medical Trust Hospital was examined as PW2 in order to prove the disability incurred by the appellant, which was certified as 80%. It is found that appellant has become incapable of doing even his primary needs on his own.

6. It is seen that the appellant sustained fracture on his temporal bone, brain oedema and brain stem contusion. He was subjected to surgery on 30.7.1999. In addition to head injury, he sustained fracture of clavicle, ulna, etc. He was brought to the Tribunal in an ambulance and the Tribunal was satisfied of the vegetative state of appellant on being completely paralysed and of the incapability to attend to his day to day needs without the help of others. But as against disability certified as 80%, Tribunal reckoned it as 60% only.

7. We find that appellant has incurred 100% functional disability. In view of the pathetic condition of the appellant who has been suffering on account of the accident right from the date of accident, viz.

on 29.7.1999, the compensation awarded by the Tribunal requires enhancement.

8. The appellant was an electrician with due qualification. Even for a daily labourer, a sum of Rs.3,500/- could have been reckoned as monthly income, in the light of the judgments of the Apex Court. In view of the disabilities as explained, we are of the view disability has to be taken as 100% for the purpose of computing compensation towards disability and monthly income as Rs.3500/- adopting the multiplier of 15. Therefore, the compensation under the head of disability will be modified as as Rs.6,30,000/- ($3500 \times 12 \times 15$). The appellant was aged 35 years at the time of accident. He continues to be in a vegetative stage and requires a bystander throughout his life time. In Annexure A1 certificate, produced along with the appeal, the Medical Board, on 6.5.2003, assessed his disability as 80%. It is stated therein that he is unable to sit or stand; he is completely bedridden; for feeding, and for passing urine/motion, he requires the help of others. Therefore, the help of a bystander is required lifelong. The Tribunal has awarded a sum of Rs.25,000/- towards bystander's expenses. The

appellant was in hospital continuously for a period of one year in Medical Trust Hospital, followed by further 10 months' treatment in another hospital. As the the period of inpatient treatment in Medical Trust Hospital itself is one year, a sum of Rs.36,500/- will be admissible towards bystanders expenses, at the rate of Rs.200/- per day. For loss of earnings for one year, we award a sum of Rs.42,000/- (Rs.3500 x 12). The pain and suffering the appellant has already undergone and being undergone and to be undergone is intolerable. In view of the condition of the appellant as explained in the disability certificate, we award a sum of Rs.50,000/- towards compensation for pain and suffering during the period of inpatient treatment and a further sum of Rs.50,000/- for continuous pain and suffering. The appellant has become completely disabled from enjoying any of the amenities in life. Therefore, we award a sum of Rs.1,00,000/- towards loss of amenities and enjoyment in life. He requires the help of at least one bystander permanently for the entire lifetime. Therefore, we award another sum of Rs.50,000/- towards bystander's expenses for lifetime. For future treatment also, we award a sum of Rs.50,000/-.

The award passed by the Tribunal is accordingly modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Medical expenses	228671	228671
Transportation expenses	15000	15000
Bystander's expenses	25000	36500
Bystander's expenses for lifetime		50000
Extra nourishment	5000	5000
Damage to clothing	500	500
Loss of amenities & enjoyment in life		100000
Loss of earnings		42000
Pain and suffering during inpatient period		50000 +
Continued pain and suffering	25000	50000
Permanent disability	244800	630000
Loss of earning capacity and future treatment	50000	50000
Total		1257671

(Rupees Twelve Lakhs Fifty-seven thousand six hundred and seventyone only)

The enhanced amount of compensation will carry interest at the rate of 9% per annum from the date of petition till realisation and 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. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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