

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

MACA.No. 1865 of 2012 ()

AGAINST THE AWARD IN OPMV 1931/2006 of M.A.C.T., ERNAKULAM DATED 23-04-2011
APPELLANT(S)/CLAIMANT IN O.P. (M.V.):

BALAGOPALA MENON, AGED 56 YEARS
S/O BALAKRISHNA MENON, KANIYAMPURAM HOUSE
THIYYADIL LANE, CHANGAMPUZHA ROAD, EDAPPILLY
COCHIN-682024.

BY ADVS.SRI.CHERIAN SEBASTIAN
SRI.RAJESH CHERIAN

RESPONDENT(S)/ (RESPONDENTS IN O.P. (M.V):

1. P.T.SURESH BABU,
POTTEKKATT-HOUSE, CHENTHRAPINNI, EDATHURUTHY
KODUNGALLOOR, THRISSUR (DIST). (OWNER) PIN:680 664.

2. RAGHUNANDANAN,
S/O RAMAN NAIR, CHERUMUKKIL-HOUSE, PERINGOTTUKARA
VADAKKUMMURI-VILLAGE
THRISSUR (DIST) (DRIVER) PIN:680 570.

3. THE NEW INDIA ASSURANCE CO.LTD.,
S.S.N. SHOPPING COMPLEX, TEMPLE-ROAD, NATTIKA P.O.
TRIPRAYAR. (INSURER) PIN:680 567.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A. No.1865 of 2012

Dated this the 8th January, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant before the Tribunal is the appellant herein. He sustained injuries in an accident which occurred on 7.9.2004. He was travelling in a tempo van bearing registration No.KL-11A 8005 from Trissur to Ernakulam to his newly rented house at Edappally along with goods. While it was passing through Edappally-Ernakulam road, at 11.30 p.m., in view of the speed of the vehicle and while negotiating a curve at Edappally –Cheranallur junction, the claimant was thrown out through the left side of the vehicle and he sustained injuries to the left arm and body. The claimant sustained the following injuries:

1. Fracture (L) Humerous bone with radial nerve palsy;
2. Fracture 2nd, 3rd and 4th
3. Meta-tarsal neck with dislocation of 5th MTP joint of (R) foot.
2. The Police registered a criminal case against the driver of the

vehicle. The claimant was treated as an inpatient for a period of 8 days in Medical Centre Hospital, Palarivattom and the treatment continued for another three months under plaster cast.

3. The appellant claimed that he was working as Sales Manager with the employer who was examined as P.W.1 and was getting a sum of Rs.9,000/- as monthly salary. Because of the fractures and radial nerve palsy sustained to the left-hand the appellant had to discontinue his job from 8.9.2004 onwards. Since he has to undertake frequent travel, being a Sales Manager, he is now unable to carry articles having any weight also. In the disability certificate issued by the Medical Board, 12% disability has been found out. The Tribunal did not accept the claim of the appellant that he was getting Rs.9,000/- per month.

4. Learned counsel for the appellant submitted that the certificate Ext.A8 showing the payment of salary is supported by the evidence of P.W.1. Therefore, there is proper proof regarding the employment as well as the monthly salary. It is submitted that the Tribunal did not accept the same for the flimsy reason that he did not produce the receipt for payment of profession tax to the Municipaity. It is submitted that when legal evidence is there, it need not be further supplemented by the tax receipt for

payment of profession tax, etc. It is therefore submitted that the finding of the Tribunal is absolutely faulty. Finally, it is submitted that Rs.3,500/- taken as notional income cannot at all be justified, considering his age and experience.

5. As regards the disability at 10% accepted by the Tribunal, learned counsel for the appellant submitted that the disability at 12% assessed by the Medical Board should have been adopted by the Tribunal. We have gone through the details of the certificate. It records various aspects and finally it is concluded that the appellant is having 12% disability as per Mc.Bride scale. Being the certificate issued by the Medical Board, the said percentage of disability can be accepted.

6. The compensation arrived at by the Tribunal is in the following manner:

<i>Head</i>	<i>Amount claimed</i>	<i>Amount awarded</i>
Loss of income	54000	10500
Travelling expenses	Not claimed	500
Damage to clothing	1000	500
Extra nourishment	Not claimed	2000
Treatment expenses	35500	30885
Bystander expenses	Not claimed	2000
Pain and suffering	15000	15000

<i>Head</i>	<i>Amount claimed</i>	<i>Amount awarded</i>
Disability	175000	21000 (towards loss of future earning capacity)
Loss of amenities	150000	15000
Total		97385

7. In the light of the evidence of P.W.1, coupled with Ext.A8, we will be justified in accepting Rs.9,000/- as the monthly salary. Evidently, in the light of the fact that he was aged 56 yrs at the time of accident, no amount can be added towards future prospects. The tribunal has awarded Rs.15,000/- for pain and suffering and an equal amount for loss of amenities. Towards partial loss of earnings Rs.10,500/- has been granted. It is seen that after discharge from the hospital he was put in plastercast for some more time. The compensation, therefore, granted towards pain and suffering and loss of income also require enhancement.

We therefore refix the compensation in the following manner:

<i>Head</i>	<i>Amount claimed</i>	<i>Amount awarded in rupees</i>
Loss of income	54000	(9000 x 3) = 27000
Travelling expenses	Not claimed	500
Damage to clothing	1000	500

<i>Head</i>	<i>Amount claimed</i>	<i>Amount awarded in rupees</i>
Extra nourishment	Not claimed	2000
Treatment expenses	35500	30885
Bystander expenses	Not claimed	2000
Pain and suffering	15000	30000
Disability	175000	64800 (9000 x 12 x 5 x 12%)
Loss of amenities	150000	15000
Total		172685

(Rupees One Lakh seventy-two thousand six hundred and eighty-five only)

The above amount will carry interest at the rate of 9% per annum from the date of petition 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. Since there is a delay of 280 days in filing the appeal, it is ordered that the appellant will not get interest for the enhanced amount of compensation for the above period.

The appeal is allowed as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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