

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 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

MACA.No. 94 of 2013 ()

AGAINST THE AWARD IN OPMV 215/2006 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, MUVATTUPUZHA DATED 22-05-2012

APPELLANT/PETITIONER:

SKARIA, S/O.MATHEW
POLLYAPRAYIL HOUSE, PRUMPADAVAM POST
ELANJI VILLAGE
MUVATTUPUZHA TALUK.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENTS/RESPONDENTS:

1. SAJU GEORGE, S/O.GEORGE
KULAYASSERIL HOUSE, KAKKOOR POST-686662.

2. JESSY JOSEPH
KUPPATHADATHIL HOUSE, PANCODE POST, VADAVUCODE
ERNAKULAM - 682 310.

3. UNITED INDIA INSURANCE CO.LTD.
TRIPUNITHURA BRANCH, 682 301.

R1 BY ADV. SRI.P.V.SANTHOSH JOSE
R1 BY ADV. SMT.DIVYA B.NAIR
R3 BY ADV. SMT.DEEPA GEORGE
R BY SRI.JOHN JOSEPH VETTIKAD

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

AL/-

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

M.A.C.A. No.94 of 2013

Dated this the 22nd day of February 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor vehicle accident which occurred on 4.10.2002. He was knocked down by a jeep bearing Registration No. KEE-2304 while he was riding a Kinetic Honda Scooter bearing Registration No. KL-7K-2699 through Vaikom-Thodupuzha Public road. He sustained very serious injuries and was taken to hospital. From 4.10.02 to 4.11.02 he underwent treatment as inpatient in the Medical College Hospital, Kottayam. He was admitted in the hospital with lacerated wound right parietal region with fracture skull and penetrating cranial cavity and multiple abrasions. His disability was assessed as 25% to whole body as per Mc Bride Scale, which is permanent in nature.

2. The claim petition was filed seeking compensation to the tune of Rs. 3,43,000/-. It was claimed that he was a business man earning a monthly income of Rs. 3,000/- per month.

Tribunal has passed an award to the tune of Rs. 1,05,968/-. This appeal is filed seeking enhancement of compensation on the ground that the compensation awarded under various heads are throughly inadequate.

3. Learned counsel for the Insurance Company opposed the claim for enhancement pointing out that the compensation awarded is just and reasonable on all heads.

4. Appellant underwent treatment as inpatient for a period of one month on account of the very serious injuries and he has undergone various courses of treatment as explained by the Tribunal in paragraph 8 of the award. His disability was assessed as 25% as evident from Ext.A9 disability certificate. Though the Tribunal found that the disabilities will affect his career as a business man, it reckoned the disability as 16%. It is submitted by the learned counsel for the appellant that the appellant was unable to do any work for a period of four months. The tribunal has granted Rs. 8,000/- only towards loss of earning.

5. The Tribunal has awarded a sum of Rs. 15,000/- towards pain and suffering. In view of the nature of injuries sustained and the treatment undergone, it is just and reasonable to grant a sum of Rs. 35,000/- towards pain and suffering. The disability certificate

shows that the appellant had fracture of right frontal bone with orbital fracture and right fronto parietal subdural haematoma. It is also stated that he made very slow recovery and require follow up treatment. He has double vision due to the mal alignment of right eye as a result of the enophthalmos of that eye due to the injury sustained in the accident. Due to the injuries sustained, he has lost normal amenities of life as was being enjoyed before the accident. In the light of the above, we are of the view that an amount of Rs. 30,0000/- is just compensation towards loss of amenities and enjoyment of life as well as shortened expectation of life.

6. The Tribunal was awarded a sum of Rs. 42,240/- towards loss sustained due to the disability reckoning the disability as 16% without stating any reason for the reduction. We therefore re-calculate the compensation under this head adopting the multiplier of 13 admissible to a person aged 50 and reckoning the disability as 25% as found in Ext.A9 certificate. Thus the disability compensation will be Rs. 78,000/- ($2000 \times 12 \times 13 \times 25 / 100$). Accordingly, we modify the award as follows:

<i>SlNo.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount modified</i>
1	Loss of earning	8000	8000
2	General expenses	5000	5000
3	Medical expenses	15728	15728

<i>SlNo.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount modified</i>
4	Future medical expenses	10000	10000
5	Pain and suffering	15000	35000
6	Loss of amenities	10000	30000
7	For disability	42240	78000 (Rs.2000x12x13x25)
	Total	105968	181728

7. Thus the appellant will be entitled to a total compensation of Rs. 1,81,728/-. In the light of the decision reported in **Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513], we fix the rate of interest at 9% p.a. The enhanced amount of compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the amount less the amount already deposited within a period of three months.

The appeal is accordingly allowed. No cost.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-

P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge

M.A.C.A. No.94 of 2013

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