

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

MACA.No. 246 of 2015 ()

AGAINST THE AWARD IN OPMV 978/2009 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, THALASSERY DATED 05-06-2014

APPELLANT/PETITIONER:

MANOJ KUMAR.K.V AGED 41 YEARS
S/O.NARAYANAN, KOTTAMULLA VALAPPIL HOUSE
KANDAKKAL P.O., VIA MAYYIL, KANNUR - 670 602.

BY ADVS.SRI.A.K.SRINIVASAN
SRI.JIMMY GEORGE
SRI.A.S.BENOY

RESPONDENT/RESPONDENT NO.3:

M/S.ORIENTAL INSURANCE CO.LTD.
DIVISIONAL OFFICE-I, SEEMA BUILDING, G.H.ROAD
CALICUT - 673 001.

R1 BY ADV. SRI.N.S.NAJEEB
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.246 of 2015

Dated this the 27th day of February 2015

JUDGMENT

Asha, J.,

The appellant met with an accident while the taxi bearing Registration No.KL-11-B-663 in which he was travelling towards Karipur Airport, was hit by a private bus bearing Registration No. KL-11-Q-144. The appellant sustained the following injuries:

- 1) Fracture clavicle left.
- 2) Fracture both bones of right forearm.
- 3) Injury below left eye.
- 4) Fracture two teeth and one tooth mobile.

2. Immediately after the accident he was taken to the Medical College Hospital, Kozhikode from where he was shifted to Koyili Hospital, Kannur and underwent inpatient treatment from 8.4.2009 to 13.4.2009. The disability was assessed 17% whole body by the Medical Board, District Hospital, Kannur.

3. The claim petition was filed seeking compensation to the tune of Rs. 4 lakhs. But the Tribunal has awarded only an amount of Rs. 2,68,300/-. This appeal is filed seeking enhancement mainly on the ground that the percentage of disability assessed

by the Tribunal for the purpose of compensation and the income reckoned are too low. It is submitted that the compensation awarded under various heads are thoroughly inadequate.

4. We heard the learned counsel for the Insurance Company also who opposed the claim for enhancement of compensation.

5. Learned counsel for the appellant submits that the appellant was unable to work consequent to the injuries sustained in the accident and he sustained 100% disability. The appellant was working as a carpenter. It was claimed that he was earning a monthly income of Rs. 8,450/-. But the Tribunal reckoned his income as Rs. 5,000/- per month.

6. Having regard to the wage structure prevailing at the time of the accident, in respect of carpenters, we are of the view that, the income of the appellant can be fixed at Rs. 6,000/- per month. The appellant was aged 36 years at the time of the accident. The Tribunal has awarded a sum of Rs. 15,000/- towards loss of earning for a period of three months. We reckon his income at Rs. 6,000/- per month and enhance the same at Rs. 18,000/-. The Tribunal has awarded a sum of Rs. 50,000/- towards pain and suffering. The tribunal has granted only Rs. 900/- towards bystander's expenses at the rate of Rs. 150/- per day. We enhance the same to Rs. 1,500/- at the rate of Rs. 250/- per day. Under the head disability, the

Tribunal has awarded a sum of Rs. 1,53,000/-. Since the appellant has sustained severe injuries like fracture clavicle left, fracture both bones of right fore arm, we are of the view that, the appellant has sustained functional disability. Being a carpenter, he has to work with the injured hands which will definitely affect his earning capacity. Therefore, we are of the view that, the disability can be reckoned as 25%. Reckoning his income at Rs.6,000/- per month, the appellant will be entitled to disability compensation of Rs. $6,000 \times 12 \times 15 \times 25 / 100 = \text{Rs.}2,70,000/-$. Because of the disability incurred, the appellant may not be able to enjoy the normal amenities of life and will have to experience to the discomfort and inconveniences for the rest of his life. Therefore, we enhance the amount awarded under the head loss of amenities to Rs. 40,000/-. Hence, the compensation awarded by the Tribunal is modified as follows:-

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amount awarded</i>	<i>Amt.awarded</i>
1	Loss of income	15000 (Rs.5,000x3)	Rs.18,000 (Rs.6,000x3)
2	Pain and suffering	50000	50000
3	Loss of amenities	25000	40000
4	Extra nourishment	1500 (Rs.500x3)	1500
5	Damage to clothing	500	500
6	Bystander's expense	900	1500 (Rs.250x6)

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amount awarded</i>	<i>Amt.awarded</i>
7	Transportation	3000	3000
8	Medical expense	19400	19400
9	Disability compensation	1,53,000	270000
	Total	268300	403900

7. Thus the appellant will be entitled to a total compensation of Rs. 4,03900/- (Rupees Four lakh Three Thousand Nine hundred only). In the light of the judgment of the apex court in **Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513], we fix the interest at the rate of 9% p.a from the date of petition.

8. The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment.

9. The court fee if any, in deficit towards the total amount awarded shall be recovered by the Tribunal before disbursement.

The appeal is allowed accordingly. No cost.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge