

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

MACA.No. 382 of 2007 ()

AGAINST THE AWARD IN OPMV 1311/2000 of ADDL.MACT, ALAPPUZHA
DATED 22-06-2006

APPELLANT/PETITIONER:

P.V.KARUNAN @ KARUNAKARAN
AGED 61, S/O.LATE VASU, PUTHUKERY HOUSE
AROOR P.O., REP. BY HIS WIFE AND NEXT FRIEND
POOVENI KARUNAKARAN, AGED 53, PUTHUKERY HOUSE
AROOR.P.O.

BY ADV. SRI.ABRAHAM K.JOHN

RESPONDENTS/RESPONDENTS:

1. K.KRISHNA MOORTHY, S/O KANDASWAMI
38/01, SANKARI MAIN ROAD, SOOTHARAMPALAYAM
P.O. TIRUCHINGODU TALUK, TAMILNADU.

2. PERIYA SAMI,S/O.GOVINDARAJA,
DOOR NO. IX-A, VALLUVAN STREET, KALANNGANI P.O.
NAMAKKAL DISTRICT, TAMILNADU.

3. UNITED INDIA INSURANCE COMPANY LTD
M.T.P.C. OFFICE, IVTH FLOOR, VETTUKATTIL BUILDINGS
KOCHI-16, (TIRUCHENGODU BRANCH)

R3 BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.382 OF 2007

Dated this the 25th day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV) No.1311/2000 on the file of the Motor Accidents Claims Tribunal, Alappuzha. The appeal is preferred as aggrieved by the quantum of compensation awarded to the appellant.

2. The facts in a nut shell is that while the appellant was riding a scooter along NH 47 from south north direction, a lorry bearing Reg.No. TN-28/U 1356 came and knocked down the scooter and in that accident the appellant sustained grievous injuries.

3. A claim for compensation was moved alleging negligence on the side of the driver of the lorry. The Tribunal awarded a total compensation of ₹1,51,500/- against a claim of ₹6,70,000/-.

4. It is the submission of the learned counsel for the appellant

that the appellant sustained grievous injuries. He sustained fracture of left temporal and occipital bones as well there was dislocation of right clavicle. He had underwent surgeries including craniotomy. He sustained subdural haematoma. It is the submission that at first he was admitted in the Medical Centre Hospital, Ernakulam and was discharged only on 12.07.1999. It is the further submission that his disability was assessed by the Medical Board as 29%. The said disability was seen assessed on 2.8.2005. At that point of time, he was having difficulty in lifting the left upper limb. There was also memory loss and shoulder movements are restricted. The Medical Board opined that there was post traumatic emotional disability due to frontal lobe syndrome. It is also the submission that he was a fisherman by profession and was also indulged in prone peeling business. It is the further submission that the appellant was having an income of more than ₹5,000/- per month at that point of time. It is submitted that even though the disability certificate was produced, no amount was granted under the head of loss of income due to disability. Even though he was a businessman, only a notional income of ₹1,500/- was considered to

assess compensation. It is the submission that the Tribunal should have considered atleast ₹4,500/- as his income.

5. The learned counsel for the Insurance Company submits that the accident occurred in 1999. It is also the submission that even though no amount was granted towards loss of income due to disability, the amounts awarded towards pain and suffering as well as loss of amenities and enjoyment of life was on a higher side.

6. After hearing the learned counsel on both sides and also after perusing the records in this case, we feel that it is a case where refixation of the compensation is warranted. Considering the job and all other attending circumstances, it will be only just and proper to take ₹3,500/- as the monthly income . The amount awarded under the head of pain and suffering and loss of amenities are also seen apparently inadequate. Considering the occupation and the fact that disability is due to head injury, a functional disability of 40% used for assessment.

7. Thus the compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transportation	1500
Damage to clothing	500
Bystander's expenses	4950 (33 x 150)
Extra nourishment	2000
Loss of earnings	31500 (3500 x 9)
Pain and suffering	40000
Disability	184800 (3500 x 12 x 11 x 40%)
Loss of enjoyment of life	50000
Treatment expenses	67500
Total	382750 (Rupees three lakhs eighty two thousand seven hundred fifty only)

8. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited before the Tribunal within a period of three months from the date of receipt of a copy of this judgment and the appellant is permitted to withdraw the amount also.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.