

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

MACA.No. 2264 of 2012 ()

AGAINST THE AWARD IN OPMV 2454/2007 of M.A.C.T., ERNAKULAM DATED
02-07-2012

APPELLANT/PETITIONER:

GEETHA SANTHOSH, AGED 38 YEARS
W/O SANTHOSH P.A., RESIDING AT PARUTHIYEZHATH HOUSE
VATTATHIPADOM, PALARIVATTOM, KOCHI-25.

BY ADVS.SRI.K.JANARDHANAN
SMT.P.C.JEEVA
SRI.K.J.MANU RAJ

RESPONDENTS/RESPONDENTS:

1. SANIL KUMAR N.K
S/O KARUNAKARAN P.K., NO.13, MARY GOLD
SHYLINE APARTMENT, PETTA, THRIPOONITHURA.

2. DR. AKHILA A.K.,
EYE SPECIALTIST, A.K.G., HOSPITAL
KANNUR-670 002.

3. THE ORIENTAL INSURANCE CO., LTD.,
HANDICRAFT BUILDING, KPK RIALTO, NEAR KOTACHERRY PUMP
THANA, KANNUR-670012.

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 02-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2264 OF 2012

Dated this the 1st day of September, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant-claimant sustained injuries in an accident which occurred on 19.9.2007 while she was walking along Kakkanadu-Irumbanam road. The accident occurred soon after she alighted from a bus at the spot of accident as she was employed in a business concern in CEPZ. She came in front of the gate of the said institution from Palarivattom and when she started crossing the road, the offending car came in great speed and hit her. She fell down on the road and sustained injuries. She was initially taken to the Lakeshore Hospital, Kochi and thereafter was treated in Lissie Hospital, Ernakulam. But the Tribunal has fixed 50% contributory negligence on the part of the appellant in trying to cross the road.

2. We heard the learned counsel on both sides.
3. The learned counsel for the appellant submits that Police

Charge is against the driver of the offending vehicle and therefore no amount of negligence can be attributed against the appellant. The learned counsel for the Insurance Company submits that going by the scene mahazar, the accident spot lies 1.10 metres west to the eastern tar end of the road which shows that she had been crossing the road without viewing the vehicle coming from other side. There is a median in the road also. It is therefore submitted that the said finding is perfectly in order.

4. After considering the rival submissions, we are of the view that the appellant is not equally negligent in causing the accident. Of course she was a pedestrian and the accident spot is 1.10 metres west to the eastern tar end of the road. She would have tried to cross the road suddenly after alighting from the bus without taking sufficient care. We therefore fix the contributory negligence at 10%.

5. As far as the injuries are concerned, they are the following :

- (1) Swelling and tenderness over (R) ankle and dorsum of (R) foot
- (2) abrasion medial of (R) ankle

(3) Bimalleolar fracture (R) ankle

(4) fracture third meta tarsal (R)

6. She has sustained two fractures. The percentage of disability assessed is 5%. The Tribunal has fixed the monthly income only at ₹3,000/-. She was working in a business concern in CEPZ. Therefore we find that ₹4,000/- claimed is reasonable. She is entitled for reasonable enhancement of compensation towards pain and suffering, loss of amenities and for continuing and permanent disability.

7. We refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	12000 (4000 x 3)
Transportation	1000
Extra nourishment	1000
Damage to clothing	500
Medical expenses	14412
Bystander's expenses	3000
Pain and suffering	25000
Permanent disability	38400 (4000 x 12 x 16 x 5%)

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of amenities	10000
Total	105312 Rounded off to ₹105,300/-

8. The appellant will be entitled for compensation of ₹ 94,770/- (Rupees ninety four thousand seven hundred seventy only) as 10% has to be reduced from the above amount of compensation. The Tribunal has found that the Insurance Company is liable to satisfy the award which we confirm. We also grant interest @ 9% for the enhanced amount of compensation. There will be a direction to the Insurance Company to deposit the amount of compensation less the amount already deposited within a period of three months and we permit the appellant to withdraw the said amount.

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

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.