IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

MACA.No. 439 of 2007 ( )

AGAINST THE AWARD IN OPMV 304/2001 DATED 10-08-2006 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA, WAYANAD.

/APPELLANT/PETITIONER:

NAZAR C.H., S/O MOIDU C.H.,
CHALIYADA HOUSE, ELLUMANNAM P.O., PALLICKAL
MANANTHAVADY VIA., WAYANAD DISTRICT.

BY ADVS.SRI.GRASHIOUS KURIAKOSE
SMT.CELINE JOSEPH

RESPONDENT/RESPONDENT NO.3:

NATIONAL INSURANCE CO. LTD.
BRANCH OFFICE, NARANGAPURAM, THALASSERY.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.R. RAMACHANDRA MENON & P. BHAVADASAN, JJ.

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M.A.C.A.No.439 of 2007

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Dated this the 30th day of November, 2015

JUDGMENT

RAMACHANDRA MENON, J.

Inadequacy of the compensation awarded by the Motor Accidents Claims Tribunal, Kalpetta in respect of serious injuries sustained by the appellant forms the subject matter of challenge in this appeal preferred by the claimant.

2. The appellant was proceeding on a motor cycle bearing No. KL 12/A 8336, when he was knocked down by a van bearing No.KL.13/E 6006 which was coming from the opposite side, driven by the first respondent, owned by the second respondent and insured by the third respondent before the Tribunal. Serious injuries were resulted involving multiple fracture, which was sought to be compensated by filing claim petition before the Tribunal. Respondents 1 and 2 before the Tribunal sought to dispute the negligence attributed on their side, besides raising other contentions on general grounds. No statutory ground on defence was pointed out from the part of the respondent insurer, who contested the matter on general grounds with reference to quantum and negligence. Existence of valid policy was admitted from their side. The evidence adduced before the Tribunal

consists of the oral testimony of the claimant given as PW1 and the documents produced as Exts. A1 to A9. Based on the available materials on record, a finding was arrived at by the Tribunal holding that the accident was only because of the negligence on the part of the driver of the van and proceeded to fix the liability accordingly. Awarding amounts under various heads, total compensation was fixed as ₹66,058/-, which was directed to be satisfied with 6% interest which is stated as on the lower side and hence the challenge in the appeal.

3. Heard the learned counsel for the appellant as well as the learned counsel appearing for the Insurance Company.

4. During the pendency of the above proceedings, additional documents, particularly with regard to the subsequent treatment availed and the consequences resulted spending huge amounts, have been brought on record by filing two separate I.As as I.A.Nos.2425/2015 and 3068 of 2015. The matter was adjourned on different occasions to ascertain the correctness/genuineness of the bills and the expenses stated as incurred by the appellant. It was accordingly, that the matter was listed for final hearing and is taken up today.

5. The nature of injuries is not reflected in the discussion made

by the Tribunal. Virtually there is no discussion at all, but for the passing observation in paragraph 7 of the award that Ext.A3 wound certificate was issued from the Tellicherry Co-operative Hospital which showed that the claimant sustained grievous injuries. The extent of disability has been certified as 10% by the Orthopeadic Surgeon of Tellicherry Co-operative Hospital vide Ext.A6, which extent however was reduced by the Tribunal to 7%. Reckoning the monthly income of the claimant on a notional basis at ₹2,100/- (as against his claim of ₹4,000/-) and the multiplier of 17, based on the age of 32 years, the compensation was worked out accordingly. The amounts awarded by the Tribunal as given in paragraph 7 are in the following terms:

Loss of earnings	₹770/-
Transport to hospital	₹1,000/-
Damage to clothing	₹300/-
Bystander's expense	₹500/-
Medical expense	₹28,500/-
Pain and suffering	₹5,000/-
Compensation for 7% disability	₹29,988/-

Interest awarded by the Tribunal is only at the rate of 6% per annum. The learned counsel appearing for the Insurance Company submits that the accident occurred was on 28.4.2001, whereas the additional documents produced along with the above mentioned I.As are of the year 2013. There is a wide gap and the same is not explained from the part of the appellant, thus contending that the said documents might not be relied on.

6. The learned counsel for the appellant submits that the nature of injuries sustained by the appellant is clearly discernible from the records already produced before the Tribunal, particularly, Ext.A3 wound certificate, Ext.A6 disability certificate and Ext.A9 discharge card. We have perused those documents. The injuries reflected from Ext.A3 dated 28.4.2001 are in the following terms:

> "1.Abrasion left side of the face. 2. Lacerated wound left side of the cheek. 3. lacerated wound left side of the forehead. Fracture left zygomas. 5. Fracture lateral wall of left orbit. 6. Fracture dislocation of left hip (fracture head of femur; acetabulam)."

The position as revealed from Ext.A6 dated 14.11.2001 is to the following effect:

> "Malunited fracture of head of femur left side with medial tilt and lateral angulation at the fracture site, intrusion of neck of femur into the head of femur, L side; malunited fracture of posterior lip of acetabulam, with irregularity of the joints. Shortening of the L lower limb by 1 cm. Restriction of all movement of the L hip, limping to the L side, weakness of L gluteal and L thigh muscles; unable to walk long distances and stand for a prolonged period. Unable to squat and sit cross legged - due to a persistent pain in the hip. Percentage of permanent disability 10%."

7. From the above, it is clear that multiple fractures were sustained in the accident and one fracture was to the head of femur of the left leg, resulting in 10% certified disability. The nature of injuries sustained by the appellant reveals that much ordeal has been undergone by the appellant, resulting in much loss of income, disability, loss of amenities and also pain and suffering, despite which the Tribunal has granted only ₹770/- as compensation towards loss of earnings, just a paltry sum of ₹5,000/- towards pain and suffering, whereas no amount has been awarded towards loss of amenities, which hence require to be modified to an appropriate extent.

8. Coming to the documents produced along with the I.As., though there is a gap of 11 years in availing the treatment from the concerned hospitals. However, it remains a fact that the fracture sustained to the head of femur is not disputed. This has been referred to in the medical records issued from the IQRAA International Hospital and Research Centre where the appellant had to undergo extensive treatment. The discharge summary dated 30.05.2013 issued from the said hospital says as follows:

> "43 years of age Mr. NAZAR admitted with known case of SEVERE OSTEOARTHRITIS HIP JOINT LT, treated with THR LT done on **30.05.2013**, [Elite plus cup ogee 28mm/50mm, (METAL ON METAL FEMORAL HEAD 28/+5

CC), Genatamicin bone cement 20GM, KS11]. Post operative stay was uneventful, started walking with walker support, sutures removed, wound cleaned at the time of discharge. Discharged with further advice."

The report dated 10.06.2013 issued from the Aswini Diagnostic Services is to the following effect:

NATURE OF SPECIMEN	: Femoral head biopsy
MACROSCOPY	: Head of femur measuring 7x7x6 cms. Cut section shows bone with areas of haemorrhage and a screw insitu.
MICROSCOPY	: Section from bone trabeculae separated by fibrocollagenous tissue and fat. One area shows marrow cells with normal myeloid erythroid maturation. Megakaryocytes are seen normally. Plasma cells are less than 10%. There is haemorrhage.
DIAGNOSIS	: Bone showing haemorrhage.

The certificate dated 19.5.2015 issued by the Pro. Dr. P. Gopinathan of the Gopinath Orthopaedic Centre, Kozhikode is to the effect that the appellant/patient was treated for post traumatic OA Hip Leg caused to him on 28.4.2001 and he was under his medication and treatment.

9. A sum of nearly ₹1,37,729/- has been incurred by the appellant in connection with the above treatments and the additional documents produced before this Court reveal that the treatment undergone is well connected with the accident occurred on 28.4.2001. As such, we do not have any difficulty in accepting the version of the

appellant as to the subsequent developments. We find that the appellant is entitled to get the entire expenses in connection with the subsequent treatment to an extent of ₹1,37,729/- and we round the figure as ₹1,37,750/-

10. Coming to the quantum of compensation awarded by the Tribunal, only a sum of ₹770/- has been awarded under the head loss of earnings. The nature and extent of injuries and disability sustained as already discussed above would have necessitated at least six months' time to enable the appellant to resume duties, though as a general worker. We also find that he was a man of 32 years on the date of the accident. Considering the economic conditions and such other prevailing circumstances as on the date of accident we find it appropriate to reckon the monthly income as ₹3,500/-. As such, the loss of earnings to be compensated comes to ₹3,500X6= ₹21,000/-. After giving credit to the sum of ₹770/- awarded by the Tribunal, the balance is ₹20,230/-.

11. The extent of disability certified by the doctor as borne by Ext.A6 to an extent of 10% ought not to have been reduced by the Tribunal to 7%, more so in view of the serious nature of injuries and the adverse circumstances resulted. We find it fit and proper to have the same reckoned as 10% itself. As put forward by the learned

counsel for the appellant, the appropriate multiplier to be adopted is 16 in view of the verdicts passed by the Apex Court on the point and as such, re-calculation is necessary. On re-working the compensation as above, it comes to 3500X16X12X10/100= ₹67,200/-. After giving credit to the amount of ₹29,988/- already awarded by the Tribunal as compensation for disability, the balance payable under this head comes to ₹37,212/-.

12. We find it appropriate to grant a sum of ₹25,000/- towards the pain and suffering and after setting off the sum of ₹5,000/- already granted, the balance comes to ₹20,000/-. The Tribunal has not awarded any amount towards the loss of amenities. We find it appropriate to grant a sum of ₹30,000/- under this head as well. In view of the extent of hospitalisation of 11 days initially and the subsequent hospitalisation for 11 days, we find it appropriate to grant a lump sum figure of ₹5000/- towards bystander's expenses. After deducting the sum of ₹1,500/- awarded by the Tribunal, the balance comes to ₹3,500/-. Thus, the total enhanced compensation payable will be ₹**2,48,692**/-

13. The Tribunal has awarded interest only at the rate of 6% per annum. But interest being awarded now is @ 9% per annum, by virtue of the decisions passed by the Supreme Court. In the said

circumstance, interest at the rate of 9% per annum from the date of petition shall be satisfied on the enhanced compensation (except the subsequent medical expenses incurred in the year 2013). The additional medical expense incurred as referred to in I.A. No. 2425 of 2015 based on the documents produced along with I.A.No. 3068 of 2015, i.e., ₹**1,37,750**/- shall carry interest at the rate of 9% per annum from today. Since the policy is admitted, we direct the Insurance Company to deposit the said amount within one month.

The appeal is disposed of.

P.R. RAMACHANDRA MENON
JUDGE

P. BHAVADASAN
JUDGE

kp/-