

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

C. R.

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

MACA.No. 458 of 2007 (D)

AGAINST THE AWARD IN OPMV 600/2005 of M.A.C.T. TIRUR DATED 24-08-2006

APPELLANT/PETITIONER:

KARUNAKARAN @ KANNAN,
S/O.UNNAMAN, AGED 41 YEARS, THOZHUVANNUR
KAVUMPURAM, P.O.THOZHUVANNUR, MALAPPURAM.

BY ADVS. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS/RESPONDENTS:

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1. ABDUL RASHEED, S/O.KADEEJA,
POTTARATH HOUSE, P.O.KUTTIPURAM, MALAPPURAM.
 2. MUHAMED SHAFY,
S/O.MUHAMMEDKUTTY, PARAMMEL VEEDU, VALIYAKUNNU AMSAM
KODUMUDY DESOM, P.O.VLIYAKUNNU, MALAPPURAM.
 3. THE NEW INDIA ASSURANCE COMPANY LTD.,
K.H.BUILDING, THAZHEPPALAM, TIRUR P.O.
TIRUR-1.

R3 BY ADV. SRI.P.M.M.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 23-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

C. R.

M. A. C. A. No.458 of 2007

Dated this the 23rd day of September, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellant sustained serious injuries in a motor accident that occurred on 11-03-2005 by knocking him down by a car while he was walking along the side of the road. He has preferred a petition before the Motor Accidents Claims Tribunal, Tirur, claiming compensation on account of the injuries sustained in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the driver of the car and awarded a total compensation of ₹40,000/- under various heads as follows:

Transport to hospital	-	₹ 1,000/-
Damages to clothing	-	₹ 500/-
Expenses for bystander	-	₹ 1,500/-

Extra-nourishment	-	₹ 1,000/-
Medical bills	-	₹ 8,800/-
Pain and suffering	-	₹10,000/-
Loss of amenities	-	₹ 8,000/-
Loss of earnings	-	₹ 9,000/-

Total	-	₹ 39,800/-
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(Rounded to ₹ 40,000/-)

The third respondent Insurance Company was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent Insurance Company. Notice to the respondents 1 and 2 was dispensed with for the reason that the third respondent Insurance Company did not dispute its liability to pay compensation in this case.

3. The appellant was taken to Al Shifa Hospital,

Perinthalmanna, after the accident. He has sustained segmental fracture of right humerus. There were abrasions on the right elbow and right knee. Also suffered laceration on the chin apart from sustaining mobility of his upper right first and second incisors. He was treated at that Hospital as inpatient from 11-03-2005 to 13-03-2005. Thereafter, he was admitted to Imbichibava Memorial Government Taluk Hospital, Ponnani. He has undergone a major surgery viz. interlocking nailing of humerus and bone grafting. He has undergone inpatient treatment there from 13-03-2005 to 26-03-2005. He was on plaster cast for six weeks. After removal of the plaster cast, he was on active physiotherapy. He was aged 40 at the time of accident. He was a construction worker during that period. The appellant was examined before the Tribunal as PW1 when he has stated the difficulties being experienced by him as a result of the injuries sustained in the accident.

4. The Tribunal has awarded ₹9,000/- as compensation for loss of earnings. For this purpose, the Tribunal has fixed

his monthly income at ₹3,000/-. We do not find any reason to interfere with the same. But, on considering the serious nature of injuries and treatments including surgery, we are of the view that the appellant could not have earned income, at least, for a period of six months after the accident. Therefore, we enhance the compensation under the head of loss of earnings to ₹18,000/-. The Tribunal has awarded ₹10,000/- as compensation for pain and suffering. This is palpably low. On considering the serious nature of injuries and treatment, we enhance the same to ₹25,000/-.

5. The appellant raised a claim, before the Tribunal, based on permanent disability relying on Ext.A8 Disability Certificate dated 14-07-2006 issued by Dr.Jacob P.J., Department of Orthopaedics, Medical College, Thrissur. It is certified in this document that the appellant had a temporary disability of 40% for the first six months and he has a permanent disability (whole body) of 11.5% as per Mc Bride Scale. But, the Tribunal did not accept Ext.A8 for the reasons that the doctor who issued the certificate was not

examined and he was not the doctor who treated the appellant. The Tribunal, in fact, not awarded any amount under the head of permanent disability even though awarded some amount under the head of loss of amenities. As directed by this Court, the appellant appeared before the Medical Board of the Medical College Hospital, Kozhikode, for the purpose of assessing his permanent disability. Accordingly, the Medical Board assessed his permanent disability and issued a certificate of permanent disability dated 13-07-2015. It is certified in this document that the appellant has a permanent disability of 41.12%. The break up of such permanent disability certified is also attached to the certificate. We have marked the certificate of permanent disability so issued by the Medical Board of the Medical College Hospital, Kozhikode, as Ext.C1. The Medical Board certified in Ext.C1 that the appellant has partial ankylosis of right shoulder with 20% loss of power of shoulder and elbow (right) with partial loss of co-ordinated activities. It is further certified that the hand weakness is due to preganglionic

lesion which cannot be attributed to the original injury. Ext.C1 is given in a printed form in which it is printed as follows:

His/Her percentage of permanent disability
due to the injury is

The percentage of permanent disability of 41.12% is written by hand in the space thus provided. Since there appeared a paradox in relation to the cause of permanent disability noted in Ext.C1, we have directed the appellant to appear in person before this Court. Accordingly, he appeared before this Court on 22-09-2015. He explained various difficulties and disabilities being experienced by him. He stated that the fingers of his right hand are stiff. He cannot hold even a glass of water or lift any object with that hand. He cannot raise his right arm even up to shoulder level. He cannot use his right hand for taking food. He further stated that there is weakness with his right leg. He has no vision in his left eye for the past two years. On account of the weakness of his right leg, he cannot have proper grip of his footwear and

hold it in place. He also stated that, for the past nine years, he has been taking medicines for blood pressure.

6. There is no medical evidence to show that the loss of vision in the left eye claimed by the appellant was due to the injuries sustained in the accident in question. Going by the facts noted in the medical documents, the disability with his right leg explained by the appellant also cannot be attributed to the injuries sustained in the accident. The appellant has relied on Ext.A8 disability certificate issued by Dr.Jacob P. J. in which the following complaints of the appellant are narrated:

- (1)Pain in right shoulder.
- (2)Stiffness of right shoulder and right elbow.
- (3)Unable to do the construction work at the time of issuing the document.

After clinical and radiological examinations of the appellant, the doctor certified the following disabilities:

- (1)Malunited fracture of humerus (two levels).
- (2)There is gross stiffness of right shoulder.

	<u>Range</u>	<u>Normal</u>
Flexion	100	180
Abduction	60	180
Internal rotation	20	45
(3)He has stiffness of right elbow joint.	20-100 ⁰	0-130 ⁰

(4)Loosening of teeth upper $\frac{12}{12}$

Also noted that the appellant needed implant removal later. The quantum of disability of the appellant evaluated in Ext.A8 is as follows:

- (1)Malunion of humerus (two levels) - 5%
- (2)Gross stiffness of shoulder and elbow - 6%
- (3)Loosening of teeth - 1%

As already stated, the permanent disability assessed for the whole body is 11.5% as per Mc Bride Scale. This disability certificate has not been accepted by the learned Tribunal for the reasons already noted. Those reasons are not based on any sound principles. Here, in Ext.A8, a competent doctor working in the Department of Orthopaedics of the Medical College, Thrissur, has certified 11.5% permanent disability

for the whole body as per Mc Bride Scale. The injuries sustained by the appellant have been specifically noted. The treatments undergone by the appellant are also noted. The complaints raised by the appellant find a place in this document. The reasons for the permanent disability certified have been clearly narrated by the doctor in Ext.A8. There is no hard and fast rule that in all cases, invariably, the doctor should be examined in order to accept the permanent disability certified by him in respect of a person sustained injuries in a motor accident. If the Tribunal is satisfied with the reasons stated by the doctor and the permanent disability certified by him, there is no need for calling him to the Tribunal and examining him for accepting the disability certified by him in the disability certificate.

7. The second reason stated by the Tribunal for rejecting Ext.A8 is that Dr. Jacob P.J. was not the doctor who treated the appellant. This is also unsustainable. There is no binding principle that, in order to rely on a disability certificate, it should have necessarily been issued by the

doctor who treated the injured. A Medical Board constituted in a medical college or in a district or general hospital is usually competent enough to assess and certify the disability of a person. The Medical Board so constituted would be comprised of doctors from different disciplines. None of them may have treated the person who is subjected to assessment. Is it a bar for acting upon the disability certificates issued by such Medical Boards? Certainly not. Similarly, a competent doctor, who may not be the doctor who treated the injured, can examine, assess and certify the disability of the injured giving the required details and reasons in his certificate. Such a medical opinion in regard to disability, temporary or permanent, has to be considered objectively by the Tribunal. If it finds that the opinion of the doctor is acceptable, it is well within the powers of the Tribunal to act upon it and award compensation accordingly. If such opinion of the doctor is found unacceptable, the Tribunal is free to reject it. The doctor who has assessed and certified the disability not being the doctor who has treated

the injured cannot be a sound reason for rejecting the disability certificate.

8. In the case on hand, we are of the considered view that the permanent disability certified in Ext.A8 certificate issued by Dr.Jacob P.J. can be accepted as true. Therefore, we accept and act upon the same.

9. We have already adverted to Ext.C1 certificate of permanent disability issued by the Medical Board. 41.12% of permanent disability is certified in the space provided in the printed form as earlier noted. But, at the same time, the fact remains that the Medical Board themselves certified in the very same certificate that the hand weakness is due to preganglionic lesion which cannot be attributed to the original injury. This is written by hand. Therefore, on considering Ext.C1 certificate as a whole, the permanent disability of 41.12% certified in it cannot be attributed exclusively to the injuries sustained by the appellant in the motor accident. Of course, as relied on by the appellant before the Tribunal, the disabilities narrated and the

quantum of disability certified in Ext.A8 can be accepted.

10. We have had the opportunity of seeing the appellant and interacting with him as already noted. He was a construction worker during the period of accident. He told us that he was doing the work of 'centering' in the construction work. It goes without saying that a person cannot perform that type of work with such a permanent disability as certified in Ext.A8. Therefore, even though we cannot accept fully the disability certified in Ext.C1, we are of the view that the appellant has sustained a permanent disability which prevented him from continuing his job as a construction worker. Going by various disabilities explained by the appellant, it is only reasonable to hold that he may not be able to engage himself in many other gainful avocations as well. That does not mean that he is totally unable to do anything earning some income. As already noted, we are of the view that the present state of affairs of the appellant preventing him from doing many of the works which could have been performed by him had the accident

not taken place cannot be fully attributed to the injuries sustained in the accident. On considering all these aspects of the matter, we fix his loss of earning capacity as a result of the permanent disability sustained due to the injuries suffered in the accident at 40%. We have already endorsed the view of the learned Tribunal that the appellant was earning a monthly income of ₹3,000/- at the time of accident. He was aged only 40 at that time. Therefore, a projected amount of ₹4,500/- can be fixed taking into account the better future prospects in relation to his income for the purpose of calculating compensation under the head of loss of earning capacity. The appropriate multiplier in this case is 15. Applying the said multiplier, the compensation for loss of earning capacity works out at ₹3,24,000/- ($₹4,500/- \times 12 \times 15 \times 40 / 100$). We allow the same. The Tribunal has awarded ₹8,000/- as compensation for loss of amenities. This is insufficient. On considering the disabilities caused by the accident, which we have already adverted to, the appellant would be experiencing considerable loss of

amenities which should be amply compensated. Therefore, we enhance the said amount of ₹8,000/- to ₹25,000/-. Thus, the appellant is entitled to an additional amount of ₹3,65,000/- (Rupees three lakh sixtyfive thousand only) as compensation over and above the amount awarded by the Tribunal. The said amount of ₹3,65,000/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The third respondent Insurance Company shall deposit the amount within thirty days from the date of receipt of a copy of this judgment.

This appeal is allowed as above.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

