

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 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

MACA.No. 2396 of 2012 ()

AGAINST THE AWARD IN OPMV 1367/2007 of ADDL.MACT,KOLLAM DATED 05-07-2011

APPELLANT(S):PETITIONER

AJAYAN

S/O.CHELLAPPAN, KALLUPURAKKAL, CHEREEYAZHIKKAL
ALAPPAD, KARUNAGAPPALLY, KOLLAM.

BY ADV. SRI.THYPARAMBIL THOMAS THOMAS

RESPONDENT(S):

1. BRIJITH EDWARD
375, VETTUTHARA PUTHUVAL, NEENDAKARA
KARUNAGAPPALLY, KOLLAM.

2. ARUN EDWARD
S/O.EDWARD, VETTUTHARA, PUTHUVAL
NEENDAKARA, KOLLAM. (DELETED)

3. THE MANAGER
NATIONAL INSURANCE CO.LTD
PARAMESWARAN PILLAI BHAVAN, HOSPITAL ROAD, KOLLAM.
(NAME OF R2 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 418/2015
DT.6.2.2015)

R3 BY ADV. SRI.AGI JOSEPH

R1 BY ADV. SRI.SAJU J PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2396 of 2012

Dated this the 6th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The injured is the appellant herein. He is a fisherman. He met with an accident on 16.10.2006 at about 7.40 a.m. He was returning to his residence from his work place. An autorickshaw bearing Reg. No.KL 23-2573 knocked him down and he fell down on the road sustaining injuries. He was taken to the Medical College Hospital, Thiruvananthapuram and was treated as inpatient till 7.12.2006.

The appellant sustained the following injuries:

- “1. Type III B compound fracture on the frontal area;
2. Type III fracture external fixation later SSG both Malleolar fracture on the left angle of left leg, later reviewed; and
3. Below kneel cast (plaster) fixed.”

2. Learned counsel for the appellant submitted that the Tribunal has granted only a meagre amount as compensation, viz. a sum of

Rs.56,000/-. The amounts have been awarded in the following manner:

<i>Head of claim</i>	<i>amount awarded by the Tribunal (Rs)</i>
Permanent partial disability	12000
Medical expenses	15000
Loss of earnings	9000
Pain and suffering	10000
Transport to hospital	5000
Extra nourishment & bystander expenses	5000
Total	56000

It is not clear from the award as to the fixation of monthly income for calculating the disability compensation. The Medical Board has issued Ext.A8 certificate, wherein the disability assessed is 20%. On the ground that the appellant has not examined any of the doctors who were members of the Medical Board, the Tribunal reassessed the percentage of disability at 5% which we cannot agree. When a competent body, viz. the Medical Board has examined the appellant and there is no dispute regarding the injury sustained or the disability suffered, the certificate should have been accepted.

3. Learned counsel for the appellant submitted that because of the disability to the ankle, the appellant is unable to walk freely and there are lot of difficulties in pursuing his personal matters also. It is submitted that he cannot do work as a fisherman as before. The appellant being a fisherman, we will be justified in fixing the monthly income at the rate of Rs.5,000/-, since the accident occurred in the year 2006. We, therefore, award an amount of Rs.20,000/- for loss of earnings (Rs.5000/- x 4 months). Towards bystander's expenses, taking Rs.250/- per day, for 53 days the amount will be Rs.13,250/-, instead of Rs.5,000/- granted by the Tribunal for extra nourishment and bystander's expenses. We grant a further amount of Rs.5,000/- towards extra nourishment. The appellant would have suffered much pain during the period of treatment and various treatment procedures including plaster was applied. It is clear from the details furnished by the appellant that he had to undergo surgeries also. Therefore we grant an amount of Rs.50,000/- towards compensation for pain and suffering. The Tribunal has granted only a sum of Rs.15,000/- for medical

expenses which we confirm. We also confirm the amount awarded towards transport to hospital at Rs.5,000/-. As far as claim towards loss of amenities and enjoyment in life, nothing has been granted by the Tribunal and we grant an amount of Rs.35,000/- under this head. Towards permanent disability the total amount will be Rs.1,56,000/-.

Thus, the award passed by the Tribunal is modified as follows:

<i>Head of claim</i>	<i>amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court</i>
Permanent partial disability	12000	156000
Medical expenses	15000	15000
Loss of earnings	9000	20000
Pain and suffering	10000	50000
Transport to hospital	5000	5000
Bystander expenses	5000	13250
Extra nourishment		5000
Loss of amenities and enjoyment in life		35000
Total		299250

(Rupees Two Lakhs Ninetynine thousand Two hundred and Fifty only)

The enhanced amount will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to

deposit the entire amount of compensation, less the amount already deposited before the Tribunal, within a period of three months.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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