

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

MACA.No. 2409 of 2012 ()

AGAINST THE AWARD IN OPMV 1035/2008 of M.A.C.T.,KOTTAYAM DATED 21-03-2012

APPELLANT(S)/PETITIONER:

R.BALARAJ
H.NO.27, ADHIDRAVIDA NORTH STREET, KADAYANALLOOR
THENKASHI TAUKE, THIRUNELVELI DISTRICT
TAMILNADU NOW R/A.SREEHYLAM, NEAR MEDICAL COLLEGE
KOTTAYAM

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SRI.B.BIPIN
SMT.THARA THAMBAN

RESPONDENT(S):

1. P.RAMKUMAR
3/6191 OLD SIVAKASI ROAD, KOORAKUNDU
VIRUDANAGAR DIST, TAMILNADU , PIN-626001 (DELETED)

2. A.PAPANASHAM,
27/11., ATHIYADI STREET, KALLADIKURICHI
AMABASMUDRAM TALUK, THIRUVELVELI, PIN-627416

3. THE RELIANCE GENERAL INSURANCE,
MUMBAI, PIN-400031

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
(R1 IS DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 25/2015
DT.28/1/2015)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.2409 of 2012

Dated this the 4th day of February, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 23.2.2008. He was travelling as a pillion rider on a motor cycle. It was hit by a lorry and he sustained severe injuries. He was taken to the General Hospital, Pathanamthitta and thereafter to Medical College Hospital, Kottayam.

2. The appellant sustained lacerated wound scalp right side 5 x 1 x 2cm., multiple abrasions on body and traumatic brain injury (severe) right hemiplegia and dysphasia. He underwent treatment in Matha Hospital, Thellakam also from 26.2.2008 to 27.3.2008. His disability was assessed in Ext.A1 by the Medical Board at 49% permanent disability. The neuro disability was separately assessed at 30%. It was found that he was having mild dysphasia - 9%, mild hemiparesis right with right sided pyramidal signs, able to walk on level easily - 10% and

thereby assessed 19% disability.

3. The appellant was working as a mason and it was claimed that he was having a monthly income at the rate of Rs.7,000/-. The claim petition was filed seeking compensation to the tune of Rs.9,81,500/-. The Tribunal awarded a sum of Rs.4,26,345/- reckoning his monthly income at Rs.4,500/-. This appeal is filed seeking enhancement of compensation on the ground that the amount awarded under various heads are thoroughly insufficient.

4. We heard learned counsel on either side. Learned counsel appearing for the insurance company opposed the claim for enhancement by pointing out that the amount awarded by the Tribunal is fair and reasonable.

5. The Tribunal has reckoned the income at the rate of Rs.4,500/- and awarded a sum of Rs.22,500/- towards loss of earnings for a period of five months. But at the same time, for assessing disability compensation the Tribunal reckoned the income at Rs.3,500/-. The disability factor is also reckoned as 40% . We find that the Medical Board has assessed the disability at 49% and he has sustained neuro

disability also at 19%. On account of the disability incurred due to the injury sustained in the accident, he has become incapable of undertaking the work of mason. We therefore, reckon the disability at 49% as found in Ext.X1 certificate. The compensation under the head of permanent disability is therefore recalculated as $\text{Rs.}4500 \times 12 \times \frac{49}{100} \times 18$ which will come to Rs.4,76,280/-.

6. The appellant was aged 25 years at the time of accident. The grievous nature of injuries and the treatment undergone by him for a very long period incurring disability at 49% have incapacitated him to have a the normal amenities of life for ever. The Tribunal has awarded a sum of Rs.20,000/- only towards loss of amenities. We enhance the same to Rs.35,000/-. Under the head “pain and suffering”, the Tribunal awarded a sum of Rs.25,000/-. Having regard to the pain and agony that was experienced by the appellant, we enhance the amount under this head to Rs.35,000/-. The appellant was only aged 25 years and he incurred disfiguration and neuro disabilities which serious affects his marriage prospects. Therefore, a sum of Rs.35,000/- is awarded towards loss of marriage prospects. The award passed by the

Tribunal is accordingly modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this court (Rs)</i>
Transportation	2000	2000
Extra nourishment	2000	2000
Damage to clothings	500	500
Bystander expenses	6000	6000
Medical expenses	45945	45945
Loss of earning	22500	22500
Pain and suffering	25000	35000
Loss of amenities	20000	35000
Permanent disability	302400	476280
Loss of marriage prospects		35000
Total		660225

(Rupees Six lakhs sixty thousand two hundred and twenty-five only)

The enhanced amount will carry interest at the rate of 9% per annum from the date of petition. 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. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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