

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 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

MACA.No. 387 of 2013 ()

AGAINST THE AWARD IN OPMV 1555/2004 of M.A.C.T.,ATTINGAL DATED
27-08-2012

APPELLANT/APPLICANT:

MAJEED, S/O ABDUL KHADER, AGED 57 YEARS
THADATHARIKATHU VEEDU, VEELLANCHIRA
PANAVOOR PO, NEDUMANGADU

BY ADVS.SRI.R.T.PRADEEP
SRI.P.BIJIMON

RESPONDENTS/RESPONDENTS 1 AND 2 AND ADDL.3RD RESPONDENT :

1. MANSOOR, ANZAR MANZIL
KULLUMTHAZHAM PO, PULKULANGARA, KOLLAM

2. THE MANAGER
NATIONAL INSURANCE CO. LTD.
ST.JOSEPH PRESS BUILDINGS, VAZHUTHACADU
THIRUVANANTHAPURAM

3. GAFUR, S/O. HANSAN
N.S.MANZIL, THADATHARIKATHU VEEDU
YETTANPALLI PANAVOOR VILLAGE.

R2 BY ADV. SRI.K.B.RAMANAND

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.387 OF 2013

Dated this the 12th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

In this appeal filed by the claimant, the grievance is regarding the inadequacy of compensation.

2. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company .

3. The appellant filed the application for compensation claiming an amount of ₹1,50,000/-. According to him, he was waiting for bus at Vellanchira bus stop along S.N.Puram -Panavoor public road at 5 p.m. On 8.9.2004 and he was hit by a motor cycle which was coming in excessive speed which was ridden by the third additional respondent.

4. The Tribunal framed two points and found in favour of the appellant as far as the first point regarding rash and negligent driving by the third respondent.

5. As regards the quantum of compensation, we heard the learned counsel on both sides. Here the appellant has produced disability certificate showing disability of 8%. The grievous injuries noted are :

Contusion right wrist

Both bones fracture forearm

Abrasion central aspect wrist.

6. He is also cited to have sustained both bones comminuted fracture lower end of right forearm. He was treated in the Taluk Head Quarters Hospital, Nedumangad. Ext.A4 is the wound certificate. The Tribunal found that the non-examination of the doctor and the reluctance of the appellant to appear before the Tribunal make the disability claim as per Ext.A5 look untrue and accordingly the same was rejected. Finally ₹5,000/- was granted.

7. The learned counsel for the appellant submitted that in the light of the fact that the appellant had produced various documents before the Tribunal, a reasonable compensation ought to have been awarded, whereas the learned counsel for the Insurance Company

submits that with regard to the details of the treatment, procedures undertaken, the expenditure involved including medical expenses and other allied aspects, evidence was not fully adduced.

8. The Tribunal's view going by the finding in paragraph 10 is that such documents have not been produced. He was not examined also.

9. Faced with the situation, the learned counsel for the appellant pleaded for an opportunity to adduce evidence before the Tribunal, oral and documentary. It is upto the appellant to adduce evidence to show the medical treatment including consultation with the Doctor, treatment procedures undertaken etc. We therefore set aside the finding on point No.2 and remand the matter for fresh consideration by the Tribunal only on the question of quantum of compensation.

The Tribunal has allowed the Insurance Company to recover the amount from the owner. Now that we have directed assessment of compensation afresh, the Insurance Company if found liable can seek for permission for recovery of amount after payment. We make it clear that the remand is only on the aspect of finalising compensation. The

Tribunal will dispose of the matter expeditiously after the appearance of parties.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.