

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 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

MACA.No. 557 of 2007 ()

AGAINST THE AWARD IN OPMV 2202/1996 of M.A.C.T., KOZHIKODE
DATED 08-01-2005

APPELLANT/PETITIONER:

MOHAMMED SALIM(MINOR), REP.
BY HIS FATHER AND LEGAL GUARDIAN MOHAMMED
S/O ABOOBACKER, MOOKKUNNUMMAL HOUSE, KODUVALLY POST
PALAKKUTTY, KOZHIKODE.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENTS/RESPONDENTS:

1. P.G.JAMES, S/O P.T.GEORGE
H 32E WEST, MANTHOP COLONY 8TH AVENUE, ASHOK NAGAR
MADRAS.

2. M/S NEW INDIA ASSURANCE COMPANY LTD.,
92, G.N CHETTY ROAD, EAST COAST CHAMBERS
T.NAGAR, MADRAS.

R2 BY ADV. SRI.PMM.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.557 OF 2007

Dated this the 24th day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV) No.2202/1996 on the file of the Motor Accidents Claims Tribunal, Kozhikode.

2. When the appeal came up for hearing, the learned counsel for the appellant vehemently submitted before us that it is a case where a 6 year old boy sustained grievous head injury and even caused mental retardation due to the said injury. It is the submission that there was hemiparesis and the appellant is continuing his treatment. The medical board assessed the disability as 40% and the Tribunal awarded a total compensation of ₹1,32,250/- alone.

3. It is the submission that even though at the time of

prosecuting the claim petition, the claimant was continuing his treatment, only ₹3,000/- awarded for medical expenses. A huge amount already incurred for treatment. The treatment is to be continued. It is the submission that the boy now requires medicines worth about ₹400/- per day. The main submission made before us is that an opportunity may be granted to adduce evidence in this regard as well as to amend the petition in tune with the present condition.

4. We heard the learned counsel for the Insurance Company also, who submitted before us that as the accident occurred on 28/8/1996, the passage of time has to be considered and there should be a finality for the proceedings. At this juncture, the learned counsel for the appellant submits that in consequence of the accident, the claimant is still suffering.

After hearing both sides, the impugned award is set aside with a rider that the amount already deposited by the Insurance

Company before the Tribunal will be adjusted towards the fresh award to be passed by the Tribunal treating it as interim compensation. Both the parties are entitled to adduce evidence and the appellant is given the right to amend the claim petition also. The parties shall appear before the Tribunal on 20.07.2015. The parties shall bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.