

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

MACA.No. 2577 of 2012 ()

AGAINST THE AWARD IN OPMV 273/2009 of M.A.C.T. TIRUR DATED 28-02-2012

APPELLANT:PETITIONER

ASHARAF
S/O.HAMZA, PANGAD HOUSE, P.O THEKKANKUTUR
TIRUR TALUK, MALAPPURAM.

BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN

RESPONDENT:3RD RESPONDENT

ICICI LOMBARD GENERAL INSURANCE CO.LTD.
1ST FLOOR, UMK TOWER, JUBILEE ROAD
UP HILL, MALAPPURAM DISTRICT, PIN 676 505.

R1 BY ADV. SRI.K.B.RAMANAND
R BY ADV. SRI.R.AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.2577 of 2012

Dated this the 26th day of February, 2015

JUDGMENT

Asha, J.

The appellant met with an accident on 5.10.2008, while he was pillion riding on a motorcycle, which was hit by a bus. He was knocked down and he sustained very severe injuries. He was taken to the hospital therefrom.

2. The claim petition was filed seeking compensation to the tune of Rs.4 lakhs. The Tribunal awarded a sum of Rs.1,14,600/-.

3. The injuries sustained by the appellant are multiple fracture thigh (L) leg femur, as recorded in Ext.A12 wound certificate. The discharge certificate from the Taluk Headquarters Hospital shows the particulars of the treatment as well as the injuries as fracture shaft of femur (R), Type I open fracture tibia (R). The appellant underwent treatment as inpatient in Al Shifa Hospital from 5.10.2008 to 17.10.2008.

4. The claim petition was filed claiming that the

appellant was working as a part time sales man in Badsha Footwear, Tirur, earning a sum of Rs.3,000/- per month. But the Tribunal found that the appellant was a Plus two student aged 18 years at Ezhur Higher Secondary School. Therefore, the notional monthly income of Rs.1,500/- was taken for the purpose of compensation. The Tribunal reckoned the permanent disability as 2%. But from Ext.C2 disability certificate issued by the State Disability Assessment Board, it is seen that the disability of the appellant has been assessed as 10%. Therefore we re-compute the compensation for permanent disability reckoning the percentage of disability as 10%. As the appellant was a Plus Two student and the accident occurred in the year 2008, we are of the view that the notional income can be reckoned as Rs.2,000/- per mensem. Therefore, the compensation under the head of permanent disability will come to $\text{Rs.}2000 \times 12 \times 18 \times 10 / 100 = \text{Rs.}43,200/-$ and a sum of Rs.8,000/- will be admissible towards loss of earnings. The Tribunal has awarded a sum of Rs.1,300/- only towards bystander's expenses. It is seen that the appellant was under hospitalisation for a period of 13 days. We enhance the amount under this head to Rs.2,600/- @ Rs.200/- for 13 days. Under the head of pain and

sufferings, the Tribunal has awarded only a sum of Rs.10,000/-. Having regard to the injuries he had suffered and the treatment undergone as well as the inconvenience and discomfort experienced by the appellant on account of the injuries sustained, we grant Rs.20,000/- towards pain and suffering. The appellant has incurred disability to the extent of 10% and the Tribunal has not awarded any amount towards loss of amenities. Hence we award a sum of Rs.15,000/- for loss of amenities. We do not find any reason for modifying the amounts already awarded by the Tribunal under the other heads. Thus the award of the Tribunal is modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded by the Tribunal</i>	<i>Modified award Amt.</i>
1	Loss of earnings	Rs. 6,000.00	Rs. 8,000.00
2	Medical and miscellaneous expenses	Rs. 76,150.00	Rs. 76,150.00
3	Bystander expenses	Rs. 1,300.00	Rs. 2,600.00
4	Transportation expenses	Rs. 2,500.00	Rs. 2,500.00
5	Extra nourishment	Rs. 1,950.00	Rs. 1,950.00
6	Damage to clothing, etc.	Rs. 500.00	Rs. 500.00
7	Pain and suffering	Rs. 10,000.00	Rs. 20,000.00
8	Compensation for permanent disability (2000X12X18X10/100)	Rs. 16,200.00	Rs. 43,200.00
9	Compensation for loss of amenities	Nil	Rs. 15,000.00
	TOTAL		Rs.1,69,900.00

(Rupees One lakh sixty nine thousand nine hundred only)

5. The appellant will be entitled to a total compensation of Rs.1,69,900/- (Rupees One lakh sixty nine thousand nine hundred only). The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimant can withdraw the amount .

The appeal is allowed accordingly. The parties will bear their respective costs in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge