

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

MACA.No. 2581 of 2012 ()

IN OPMV 1220/2010 of ADDL.MACT, ERNAKULAM DATED 05-06-2012

APPELLANT(S)/APPELLANT:

**K.N.RAJAGOPALAN, AGED 54 YEARS
SON OF NEELAKANDAN ACHARI, VENGASSERIL RETNA NIVAS
ERUVELY, CHOTTANIKKARA P.O. ERNAKULAM DISTRICT.**

**BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SMT.ANILA PETER
SRI.J.VIVEK GEORGE**

RESPONDENT(S)/RESPONDENTS:

- 1. MANOJ
VADAKKEDATHUPATHIYIL
MANARCADU P.O. KOTTAYAM PIN-686019.**
- 2. SHANAVAS K.A
S/O. ABDUL KHADER, SHAJ MANZIL
NEAR ANUGRAHA HOSPITAL
KARAPUZHA P.O. KOTTAYAM PIN 686003.**
- 3. NATIONAL INSURANCE COMPANY LIMITED,
COCHIN DIVISIONAL OFFICE, AJAY VIHAR, M.G.ROAD
COCHIN 682016.**

R3 BY ADV. SMT.RAJI T.BHASKAR

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

M.A.C.A.No.2581 of 2012

Dated this the 11th day of August, 2015

JUDGMENT

K.P.Jyothindranath, J.

This is an appeal filed by the claimant in O.P. (MV).No.1220/2010 on the file of the Additional Motor Accidents Claims Tribunal, Ernakulam. The quantum of compensation awarded by the Tribunal is under challenge in this appeal.

2. The facts in a nutshell is as follows; On 12.05.2010, while the petitioner was riding his motorcycle bearing Registration No.KL 39 8407 through Kurikad - Puthiyakavu road, a car bearing Registration No.KEK 5843 came from the opposite direction and hit against the bike and in that accident, the appellant sustained very severe injuries and admitted in a hospital and treated therein. He moved the claim petition before the Tribunal, claiming a total compensation of Rs.7,00,000/-. The Tribunal awarded only a sum of

Rs.1,47,015/-. Aggrieved by the same, the appellant preferred this appeal.

3. When the appeal came up for hearing, the counsel for the appellant submitted before us that here is a case where, the appellant sustained fracture of right femur as well as fracture of tibia. It is the submission that the major portion of the compensation awarded is on the head of reimbursement of medical bills. Even though, it is a case of fracture of two major bones of the body, the compensation awarded on various heads are meagre. It is also submitted before us that the disability assessed due to the fracture was 4%. But no amount awarded on the said head. It is the further submission that the Tribunal considered only a monthly income of Rs.3,000/-, even though, the accident occurred in the year 2010. It is the submission that the appellant was an Appraiser in the Central Bank of India and his income will come more than Rs.10,000/- during that period. Thus the submission is that the compensation awarded has to be refixed by this Court.

4. The counsel for the Insurance company submitted before us that, when there was no wound certificate produced by the appellant, to prove the injuries sustained by him, the Tribunal has rightly considered that there is some fractures and awarded the just compensation. The nature and extend of the fracture is not actually proved by the appellant before the Tribunal. It is also submitted before us that when there is no positive evidence to show the income of the appellant, the Tribunal considered Rs.3,000/- for assessment purpose. It is also the submission made before us that when the disability is not affected the profession or occupation, the Tribunal could not awarded any amount on that head. It is the submission that an interference by this Court is not warranted, when just compensation is seen awarded by the Tribunal.

5. After considering the submission of the counsel and perusal of the materials, it can be seen that there is fracture on the femur as well as tibia. When there is a fracture on the femur, it is evident and apparent that

the appellant will not be in a position to move at least for a period of six months. The accident occurred in the year 2010. Even a casual labourer can earn more than Rs.6,000/- in 2010. It will be only just and proper to consider a monthly income of Rs.6,000/- for assessment purpose in this case. After going through the compensation awarded on various heads, we feel that here is a case where re-fixation is warranted. Thus the just and fair compensation is re-fixed as follows.

Head of Claim	Amount Awarded in Rupees
(a) Loss of earnings for 6 months (6000x6)	Rs.36,000/-
(b) Transportation expenses	Rs.2,000/-
(c) Damage to clothing	Rs.1,250/-
(d) Extra nourishment	Rs.2,250/-
(e) Bystanders expenses	Rs.2,250/-
(f) Medical expenses	Rs.1,04,515
(g) Pain and sufferings	Rs.35,000/-
(h) Loss of amenities and enjoyment in life	Rs.15,000/-
(i) Permanent disability	Rs.31,680/-
Total	Rs.2,29,945/- rounded as Rs.2,30,000/- (Rupees Two lakh thirty thousand only)

6. The appellant will be entitled for a total compensation of Rs.2,29,945/- (Rupees Two lakh twenty

nine thousand nine hundred and forty five only) which we rounded as Rs.2,30,000/-(Rupees Two lakh thirty thousand only). The enhanced compensation will bear with 9% interest from the date of the petition. The enhanced compensation shall be deposited by the Insurance company within a period of three months from this order. On depositing, the appellant will be entitled for release of the said amount.

In the light of the above findings, M.A.C.A.No.2581/2012 is allowed accordingly. Parties will bear their cost in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

VS

/TRUE COPY/

PA TO JUDGE