

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&**

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

MACA.No. 2595 of 2012 ()

IN OPMV 1171/2009 of ADDL. MACT, EKM DATED 26-06-2012

APPELLANT(S)/APPELLANT/PETITIONER :

**ANURAJ P.R., AGED 24 YEARS
S/O. M.N.RAJAN, MANDIRATHIL HOUSE, AROOR P.O.
AROOR VILLAGE, ALAPPUZHA DISTRICT.**

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

RESPONDENT(S)/RESPONDENTS :

- 1. THE PARTNER, M/S.CLASSIC PAINTS
KOITHARA BUILDINGS, M.G.ROAD, ERNAKULAM
KOCHI-682 016.**
- 2. ANIL KUMAR S.K.
S/O. KRISHNANKUTTY MENON, KARAKKAL, ERAMALLOOR P.O.
CHERTHALA, PIN-688 537.**
- 3. THE ORIENTAL INSURANCE COMPANY LIMITED
DEEPTHI BUILDING, PALLIMUKKU, KOCHI-682 016.**

**R3 BY ADV. SRI.TITUS MANI
R BY SRI.GEORGE CHERIAN (THIRUVALLA)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

M.A.C.A.No.2595 of 2012

Dated this the 13th day of August, 2015

JUDGMENT

T.R.Ramachandran Nair, J.

Due to the inadequacy of the quantum of compensation awarded by the Tribunal, the appellant in O.P.(MV).No.1171/2009 approached this Court by filing this appeal.

2. The petitioner got involved in an accident on 22.03.2009 while he was driving a Maruti van through Alappuzha-Ernakulam National Highway. He had stopped the vehicle on left side of the road and a Mini lorry which was coming from the very same direction stopped it parallel to the Maruti van. After the appellant had a talk with the second respondent and while he was trying to enter the driver's seat, the second respondent negligently drove the vehicle forward and this resulted in the mini lorry hitting on the door of the maruti van. The appellant's

right hand got jammed with the door and he sustained severe injuries. Therefore the appellant preferred an application for compensation claiming a total amount claimed is Rs.3 lakhs against the respondents. The Tribunal after considering the evidence, awarded an amount of Rs.87,874/- with interest of 9% from 22.06.2009. Out of the total amount Rs.51,474/- represents the medical expenses. Aggrieved by the same, the appellant has preferred this appeal.

3. The learned counsel for the appellant submitted that no amount has been awarded towards permanent disability, in spite of the fact that there was amputation of right index finger and the right hand suffered severe crush injury. It is also submitted that the monthly income assessed as Rs.4,000/-, is not correct as he was a Machanic earning Rs.5,800/-. It is also submitted that the compensation awarded towards pain and suffering, loss of amenities and enjoyment in life and other heads require proper enhancement.

4. The learned counsel for the insurance company submitted that there is no permanent disability as such, as the injuries have been treated and the evidence will show that there is no amputation of the finger resulting in permanent disability. The same is the finding by the Tribunal also. Therefore, the learned counsel submitted that the compensation granted by the Tribunal is adequate.

5. We have gone through the medical certificates. He had sustained the following injuries.

“(i) Sub total amputation of right index finger.

(ii) Severe crush injury of right hand + none loss + FDP tendon and digital nerves intact,

(iii) Laceration of thumb right.”

6. Ext.A6 is the copy of the wound certificate and Ext.A7 is the discharge summary issued from Specialise Hospital. He was treated as inpatient for a period of 14 days from 22.03.2009 to 04.04.2009 and a surgery was conducted on 22.03.2009. We have gone through the certificates to find out whether the index

finger is remaining amputated even after the surgery. It is seen that the wound was explored, bone fixed with SS wire and both arteries were repaired. True that it was a case of severe crush injury but in the light of the effective treatment, the finger got repaired. The appellant has not produced any disability certificate to show that there is any physical disability. Therefore, we cannot accept the arguments of the learned counsel for the appellant that the appellant has suffer permanent disability.

7. As far as the monthly income is concerned, even though Ext.A9 has been produced, it is a certificate issued from Kumar Auto Garage in the absence of examination of anybody, the Tribunal did not accept the same. But fixed Rs.4,000/- as monthly income. We do not find any reason to interfere with the same.

8. But we are also of the view that since he had undergone a surgery, minimum three months time have to be taken for rest and therefore we grant a total amount of Rs.12,000/- towards loss of earnings for three months.

As well as bystanders expenses are concerned, we grant an amount of Rs.300/- per day. For pain and sufferings we enhance the same to Rs.35,000/-, since he was inpatient for 14 days and had undergone a surgery. We enhance the amounts under various other heads also. The total compensation is as follows.

Head of claim	Amount awarded in Rupees
(a) Loss of earning (4000x3)	Rs.12,000/-
(b) Damages to clothing	Rs.500/-
(c) Extra nourishment	Rs.2,500/-
(d) Medical expenses	Rs.51,474/-
(e) Bystanders expenses	Rs.5,200/-
(f) Pain and sufferings	Rs.35,000/-
(g) Loss of amenities and enjoyments in life	Rs.10,000/-
Total	Rs.1,16,674/- (Rupees One lakh sixteen thousand six hundred and seventy four only)

9. Total compensation is awarded as Rs.1,16,674/-, which we round off to Rs.1,16,700/-(One lakh sixteen thousand and seven hundred only), which will carry 9% interest from the date of filing the petition (22.06.2008). The insurance company is found liable by

the Tribunal, to satisfy the award, which we confirm. There will be a direction to the insurance company to deposit the enhanced compensation along with interest, less the amount already deposited, within a period of three months and we permit the appellant to withdraw the amount.

In the light of the above findings, M.A.C.A.No.2595/2012 is allowed. Parties will bear their costs in the appeals.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

VS

/TRUE COPY/

PA TO JUDGE