

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 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

MACA.No. 189 of 2011 ( )  
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AGAINST THE AWARD IN OPMV 121/2007 of MACT, IRINJALAKUDA DATED  
23/2/2010

APPELLANT(S)/PETITIONER:  
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K.SIVARAMAN NAIR @ K.S.R.NAIR,  
S/O.NARAYANAN NAIR, 'SIVA KRIPA', CHERUVULLIL HOUSE  
EDAVILANGU VILLAGE, KATHYALAM DESOM, P.O.KARA  
THRISSUR DIST.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENT(S)/RESPONDENTS:  
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1. PREM KUMAR, S/O.GOVINDAN, VAZHOOR HOUSE,  
S.N.PURAM NEAR ASMABI COLLEGE, VEMBALLOOR P.O.  
KODUNGALLUR TALUK - 680664.

2. THE BRANCH MANAGER,  
ORIENTAL INSURANCE CO.LTD., MANAPPATT BUILDING  
NORTH NADA, KODUNGALLUR - 680664.

R,R1 BY ADV. SRI.K.S.RAJESH  
R,R1 BY ADV. SRI.M.SHAJU PURUSHOTHAMAN  
R,R2 BY ADV. SRI.RAJESH THOMAS  
R3 BY ADV. SRI.N.S. MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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**M.A.C.A.No.189 of 2011**  
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**Dated this the 5<sup>th</sup> day of February, 2015**

**JUDGMENT**

**Ramachandran Nair, J.**

This appeal is filed from the award passed by the Motor Accidents Claims Tribunal, Irinjalakuda. The accident occurred on 16.2.2006 at a place called Anchangadi. While the appellant was riding a bicycle the offending vehicle, viz. Motor cycle bearing reg.No.47/1895 hit him. He was immediately taken to Modern Hospital, Kodungallur and was treated there as inpatient for seven days. He had sustained segmental fracture of the right tibia and fracture of right fibula. In 2008 he was again admitted for three days for removal of implant, as evident from Ext.A5.

2. Ext.A6 is the disability certificate showing 8% on the reason of pain and swelling at the fracture site as also shortening of the right leg by 1 c.m. On the date of trial the Tribunal noted that there is some

deformity on his right leg due to the fracture sustained in the accident and there is also shortening of right leg.

3. Learned counsel for the appellant submitted that the Tribunal has not granted any amount towards future treatment. It is also submitted that the disability has not been assessed properly.

4. It is seen that towards medical bills an amount of Rs.43,350/- has been granted. The further amounts granted under the different heads are shown below:

|                                |                                       |
|--------------------------------|---------------------------------------|
| Bystander expenses             | - Rs.1,000/-                          |
| Transportation expenses        | - Rs. 750/-                           |
| Loss of income                 | - Rs.6,000/- (Rs.2000 x 3 months)     |
| Permanent disability           | - Rs.9,600/- (Rs.24000/- x 5 x 8/100) |
| Pain and suffering             | - Rs.15,000/-                         |
| Discomfort & loss of amenities | - Rs. 5,000/-                         |

Learned counsel for the appellant is right in submitting that for the surgery conducted in 2008 no amount has been granted. It is clear from the award that the appellant was admitted for three days for removal of implant in the year 2008. Even though no receipts showing

the payment of amounts has been produced, we find that a sum of Rs.10,000/- will be a reasonable amount for the expenses incurred in connection with the surgery.

5. Even though learned counsel for the appellant argued for a higher compensation for the disability, in the light of the fact that he is aged above 65 years, it cannot be said that the earnings assessed by the Tribunal is wrong. We find that the Tribunal has not granted any amount towards disfigurement and deformity to his leg. It has been noted that there is deformity in his right leg due to the fracture and there is shortening also. Therefore, for disfigurement he is entitled to a compensation at Rs.20,000/-. Towards bystander's expense also, we grant a sum of Rs.1,000/- more, totaling to Rs.2,000/-.

6. As far as pain and suffering is concerned, an amount of Rs.15,000/- has been granted by the Tribunal which we enhance to Rs.25,000/-. Accordingly, the total compensation will be as follows:

| <i>Head of claim</i>    | <i>Amount awarded by the Tribunal (Rs)</i> | <i>Modified award passed by this Court (Rs)</i> |
|-------------------------|--------------------------------------------|-------------------------------------------------|
|                         |                                            |                                                 |
| <i>Medical expenses</i> | <i>43350</i>                               | <i>43350</i>                                    |

| <i>Head of claim</i>           | <i>Amount awarded by<br/>the Tribunal (Rs)</i> | <i>Modified award<br/>passed by this<br/>Court (Rs)</i> |
|--------------------------------|------------------------------------------------|---------------------------------------------------------|
| Bystander expenses             | 1000                                           | 2000                                                    |
| Transportation expenses        | 750                                            | 750                                                     |
| Loss of income                 | 6000                                           | 6000                                                    |
| Permanent disability           | 9600                                           | 9600                                                    |
| Pain and suffering             | 15000                                          | 25000                                                   |
| Future treatment               |                                                | 10000                                                   |
| Disfigurement                  |                                                | 20000                                                   |
| Discomfort & loss of amenities | 5000                                           | 5000                                                    |
| Total                          |                                                | 121700                                                  |

We award interest at 9% per annum from the date of petition for the total amount of compensation. The insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. No costs.

**(T.R. RAMACHANDRAN NAIR, JUDGE.)**

**(P.V. ASHA, JUDGE.)**

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