

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

MACA.No. 203 of 2011 ()

AGAINST THE AWARD IN OPMV 1543/2008 of M.A.C.T., ERNAKULAM DATED
16-07-2010

APPELLANT/PETITIONER:

SUNIL C.GEORGE, S/O.GEORGE,
AGED 41 YEARS, CHAKKALAMOOLAYIL HOUSE
BHRAHMAPURAM.P.O., AMBALAMEDU VIA, ERNAKULAM
DISTRICT, PIN-682 303, NOW RESIDING AT C/O.
T.V.ABRAHAM, THURUTHIYIL HOUSE, THIRUVANKULAM
HOUSE, ERNAKULAM 682305

BY ADV. SRI.VARGHESE K.PAUL

RESPONDENT/RESPONDENT:

1. MANOHARAN, S/O.SIVASANKARAN NAIR,
KUNDOOR PUTHENPURAYIL HOUSE, PEECHINGACHIRA
VELOOR KARA, PUTHENCruz.P.O., PUTHENCruz VILLAGE
PIN-682 308.

2. THE NATIONAL INSURANCE CO.,
P.O.KOLENCHERRY, ERNAKULAM DISTRICT
REPRESENTED BY ITS MANAGER. PIN-682 311.

R2 BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.N.RAGHUNATH
R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.203 OF 2011

Dated this the 9th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The quantum of compensation awarded by the Tribunal is under challenge at the hands of the appellant who was a petitioner before the Tribunal. The accident in this case occurred on 9.7.2007. He was riding a motor cycle bearing Reg.No.KL-7/AH 2563 through the Peechingachira-Vadavukode canal road. The offending vehicle is a jeep bearing Reg.No.KBR-3049 which collided with the motor cycle and it caused serious injuries to him.

2. The appellant suffered injuries to his right wrist, anterior aspect 4 x 1 cm., swelling deformity and lacerated wound 5 x 1 cm. lower 3rd right leg with swelling deformity and lacerated wound 3 x 5 cm. left hand. He was treated as an inpatient from 9.7.2007 to 02.08.2007. X-ray - right leg - showed closed fracture both bones right leg distal 3rd and middle 3rd. X-ray -right wrist and hand showed

open fracture dislocation right wrist with comminuted distal radius fracture - open fracture distal phalanx right middle finger. He was again admitted on 29/8/2007 and was discharged on 8.09.2007 for removal of external fixator. The inpatient treatment is for a period of 35 days.

3. It is submitted by the learned counsel for the appellant that the outpatient treatment continued for some more time. As against the total claim of ₹ 9 lakhs, the Tribunal has granted ₹ 83,000/-.

4. The main attack is on the aspect of non-granting of any amount towards disability, the non-acceptance of the entire amount of salary claimed at ₹12,000/- for his avocation as construction manager and the non-grant of the entire amount for medical expenses etc.

5. As far as the medical expenses are concerned, we find from the bills produced by the appellant that there is a consolidated statement issued by the Kolencherry Medical College, Hospital, where the total amount paid is shown as ₹97,166/-. ₹2000/- is covered by another bill dated 25.8.2007. Further, another bill produced is for ₹429/-. Therefore the total amount will be ₹1,00,545/- including that

of the two bills dated 12.7.2007, out of which ₹11,000/- alone has been granted by the Tribunal. Therefore we award a total sum of ₹1,00,000/- towards treatment expenses.

6. As far as the salary claimed is concerned, the appellant has produced Ext.A8 employment certificate. Going by the same, he was working as a construction manager for the period from 1.7.2005 to 9.7.2007 with a private employer who has issued the certificate.

7. The learned Senior counsel appearing for the Insurance Company pointed out that the person who issued the certificate has not been examined and the certificate is not properly proved also.

8. With regard to the qualification of the appellant also, there is no documentary evidence. Even though the learned counsel for the appellant submits that he is a diploma holder, since the evidence is wanting on this aspect, we will not be justified in adopting Rs.12,000/- as the salary. The Tribunal has adopted the monthly income notionally at Rs.3,000/-. Since there is no corroborative evidence of the contents of Ext.A8 and the evidence to show the qualification, we cannot find fault with the Tribunal on this aspect i.e. for not accepting ₹12,000/- as

salary. The accident is of the year 2007. To arrive at a just and fair compensation, we will be justified in fixing Rs.5,000/- as the monthly income notionally. As far as the disability factor is concerned, the Tribunal did not accept the certificate Ext.X1. Since temporary disability of 12% alone was shown, pursuant to the direction issued by this Court, the Medical Board attached to the General Hospital, Ernakulam has forwarded the certificate. Therein the whole body permanent disability is assessed at 4%. We record below the clinical findings and radiological findings :

“Clinical findings : 1. Scarring on the dorsal aspect of (Rt) wrist with restricted dorsiflexion. Adduction & abduction of little & ring fingers defective.

2. Scarring with fascial defect of either side of (Rt) leg with limitation of dorsiflexion & plantar flexion.

Radiological findings : 1. Fracture tibia – well united Fracture fibula-united with angulation.

Fracture radius united.”

9. The learned counsel for the appellant submitted that he lost the job as he is finding it difficult to walk and therefore the compensation will have to be assessed considering the said aspect also. Going by the disability certificate, even though the appellant complained of pain in the right ankle on prolonged walking and inability to squat, which are recorded in the certificate of the Medical Board, what is entered in the clinical finding do not entirely support of the case of the appellant that he is unable to walk. Since the certificate is issued by the expert body, this court will accept the percentage of physical disability as 4%. Since the appellant was aged 39, the multiplier of 15 can be adopted. Accordingly, the compensation towards disability will be Rs.36,000/- (5000 x 12 x 15 x 4/100). The Tribunal has granted Rs.30,000/- towards pain and suffering and Rs.20,000/- for loss of amenities and enjoyment of life. The learned counsel further submitted that towards attendance expenses, only a sum of Rs.6,500/- is granted. He has also complained that for transportation and extra nourishment and damage to clothing, meagre amounts have

been granted.

10. We produce below the the table showing the assessment of compensation by the Tribunal.

<i>Head of claim</i>	<i>Amount awarded in Rupees</i>
Loss of earnings from 9.7.2007 to 30.06.08	12000
Transport to hospital and back	1000
Extra nourishment	2000
Damage to clothing & articles	500
Treatment expenses	11000
Attendant expenses	6500
Compensation for pain and suffering	30000
Loss of amenities and enjoyment in life	20000
Total	83000

11. We refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount awarded in Rupees</i>
Loss of earnings from 9.7.2007 to 30.06.08	20000
Transport to hospital and back	3000

<i>Head of claim</i>	<i>Amount awarded in Rupees</i>
Extra nourishment	5000
Damage to clothing & articles	2000
Treatment expenses	100000
Attendant expenses	7000 (35 x 200)
Compensation for pain and suffering	40000
Loss of amenities and enjoyment in life	20000
Disability	36000
Total	233000 (Rupees two lakhs thirty three thousand only)

12. The amount will carry interest @ 9% per annum from the date of petition. The Insurance Company will deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

P.V.ASHA, JUDGE