

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. 586 of 2013 ()

AGAINST THE AWARD IN OPMV 755/2007 of M.A.C.T.,ATTINGAL DATED
APPELLANT(S):PETITIONER

JACOB V KURIAKOSE
VADAKKEDATHU HOUSE, VENGATHANAM POST, PALAPRA 686 512.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENT(S):

1. ALEX D SOUZA
SRAMBIKAL HOUSE, A.S ROAD
ALAPPUZHA DISTRICT. 688 001.(DELETED)

2. SREEKANTH
S/O.DIVAKARAN, AMBADY HOUSE, KOMALAPURAM VILLAGE
ALAPPUZHA DISTRICT. 688 001.(DELETED)

3. THE NEW INDIA ASSURANCE CO.LTD
P.B NO. 74, M.O WARD, NEAR TOWN HALL
ALAPPUZHA 688 001.

(NAMES OF R1 AND R2 DELETED AS PER ORDER IN IA 389/2015 DATED
5.2.2015)

R3 BY ADV. SRI.M.JACOB MURICKAN

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.**

M.A.C.A.No.586 of 2013

Dated this the 5th day of February, 2015
JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 31.3.2007. He was knocked down from his motor cycle by a car which came from the opposite direction. He sustained very serious injuries and was taken to Matha Hospital, Thellakom and then shifted to Specialist Hospital, Ernakulam wherein he underwent six surgeries. He was discharged from that hospital on 12.7.2007.

2. The appellant was working as Route Manager of Malanadu Milk Producers Society. He had to undergo treatment as inpatient for a period of 195 days and hence he was on loss of pay leave for a period of 31 months. The claim petition was filed seeking compensation to the tune of Rs.14,54,941/-. Learned counsel for the appellant pointed out that subsequently, an amendment petition was filed before the Tribunal seeking amendment of the total claim for compensation as

Rs.16,73,527/-.. The Tribunal awarded a total compensation at Rs.9,37,502/-/. This appeal is filed seeking enhancement of compensation. It is pointed out that an amount of Rs.5,46,519/- has been awarded towards medical expenses as against the claim for Rs.5 Lakhs. Learned counsel for the appellant submits that the appellant is undergoing treatment even now on account of the injuries sustained to him.

3. We heard learned counsel for the insurance company also who opposed the claim for enhancement.

It is seen that the appellant sustained the following injuries:

1. Lacerated wound 20 x 15 x 10 cm right leg exposing tendo achilles with paratenon;
2. Compound comminuted fracture both bones right leg with compound tissue loss; and
3. Skin and soft tissue lost anterior aspect of leg exposing muscles and bone.

The treatment certificate shows the diagnosis of osteomyelitis @ tibia with discharging sinus. The Medical Board assessed his disability at 26%. On account of the injuries sustained the appellant who was

working as Route Manager of Malanad Milk Producers Society, was given an alternate employment and he is drawing a salary of Rs.6,832/-. At the same time, the certificate issued from the Society on 30.6.2012 which was marked as Ext.A35 through PW2 shows that the salary which would have been admissible to him if he continued in the same post, is Rs.11,540/-.

4. Before the Tribunal, oral evidence was adduced by examining P.Ws.1 and 2 and documentary evidence Exs.A1 to A39 have been produced in order to prove the injuries sustained, treatment undergone and the loss caused to the appellant by way of loss of pay as well as expenditure incurred by him for treatment.

5. The Tribunal awarded a sum of Rs.1,68,103/- towards loss of earnings in the light of Ext.A13 salary details produced by the appellant, for a period of 31 months. Towards bystander's expenses, a sum of Rs.30,000/- was awarded, even though it was found that he was under inpatient treatment in for a period of 185 days.

6. The Tribunal awarded a sum of Rs.74880/- under the head of disability, which is detailed as $(3000 \times 12 \times 8 \times 26\%)$, without explaining

how it was arrived at. In this case the appellant had to accept an alternate job with lesser salary, on account of the accident. It is seen from Ext.A35 certificate issued on 30.6.2012 which was marked through P.W.2, that appellant would have drawn a sum of Rs. 11540/- in the year 2012, in case he continued in the same post and that the gross salary attached to his present post is Rs. 6832/-. That means that there is a reduction in his monthly earnings by 59%. The monthly earnings of the appellant at the time of accident was Rs.4444/-. On reduction by 59%, he is sustaining loss in his monthly earnings @ Rs.2621/-. Since he was a permanent employee in the Bank, 50% of the same has to be added towards future prospects in salary. Therefore, the total loss of earnings per month can be reckoned as Rs. 3932/. Appellant was aged only 38 at the time of accident. Therefore the proper multiplier to be adopted is 15. The compensation for loss of earning power will therefore be Rs. 7,07,760/- ($2621 \times 150 / 100 \times 12 \times 15$) in the place of Rs.74,880/- awarded by the Tribunal under the head of disability. The Tribunal has awarded only a sum of Rs.30,000/- towards compensation for pain and suffering. In view of the nature of

injuries and the prolonged treatment being undergone by the appellant ever since the date of accident, we think it proper to award a sum of Rs.75,000/- under the head of pain and suffering. Similarly, the appellant permanently lost his enjoyment and amenities in life on account of the injuries sustained at the age of 36 itself. Therefore, we award a sum of Rs.75,000/- for loss of amenities and enjoyment in life.

Accordingly, the awarded is modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Loss of earnings	168103	168103
Transport to hospital	25000	25000
Extra nourishment	2000	2000
Damage to clothing & articles	1000	1000
Bystander expenses	30000	30000
Medical expenses	546519	546519
Pain and suffering	30000	75000
Disability	74880	
Loss of amenities	20000	75000
Loss of earning power		707760
Expenses for future treatment	40000	40000
Total	937502	16,70382/-

The appellant will be entitled for a total compensation of Rs.16,70,382/-. The enhanced amount will carry interest at the rate of

9% per annum from the date of petition, in the light of the decision of the Apex Court in **Supeidei (Smt) and others v. National Insurance Company Ltd. and others** {(2009) 4 SCC 513}. 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 accordingly.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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