IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

MACA.No. 811 of 2007 ( )

AGAINST THE AWARD IN OPMV 171/1999 of M.A.C.T., PALAKKAD

APPELLANT/PETITIONER::

SSR.JAYASEKAR, AGED 49 YEARS,
S/O.K.S.SOLOMON, RESIDING AT NO.9, NORTH STREET
V.P.COLONY, MADRAS-23.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS/RESPONDENTS::
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1. RAMESHKUMAR, AGED 22 YEARS,
S/O.THIRUJNANASAMBAMTHAM PILLA, RESIDING AT
HOUSE NO.63, PILLAYAR KOVIL STREET, JAGANATHAPURAM
ARIYAMANGALAM, TRICHI TALUK, TAMILNADU.

2. T.K.RAMACHANDRAN AGED NOT KNOWN,
S/O.T.S.KRISHNAMOORTHY, RESIDING AT HOUSE NO.15
4TH FLAT, SUNDHARAM FLAT, SOOLUR ROAD
TRICHINAPALLY, TAMILNADU.

3. THE NEW INDIA ASSURANCE C0.LTD.,
TRICHINAPPALLY.

R3 BY ADV. SRI.KKM.SHERIF

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.
- -
M.A.C.A.No.811 OF 2007
- -
Dated this the 3rd day of July, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellant who was the claimant before the Motor Accidents Claims Tribunal, Palakkad in O.P.(MV) No.171/1999. The main grievance raised is regarding the inadequacy of the compensation granted.

2. The accident occurred on 1.7.1997 at about 9.45 p.m. when he was travelling in a car bearing reg.No.TN 45 F-7822 from Thrissur to Coimbatore and it collided with a lorry bearing Reg.No.KLG 8460. It was alleged that the driver of the car was negligent in driving it, which caused the accident. He was immediately taken to the District Hospital, Palakkad and thereafter he was treated in the K.G.Hospital, Coimbatore as well as in another hospital in Madras.

3. The appellant was working as Senior Manager in Catholic Syrian Bank earning a monthly salary of Rs. 14,000/- at the time of the

accident. The scale of pay is proved by Ext.A9 certificate. The total compensation claimed is Rs. 10 lakhs and what is awarded by the Tribunal is only Rs.38,500/-.

4. Heard the learned counsel on both sides. The learned counsel for the appellant submits that the injuries were very series in nature. He had sustained different fractures and had to be under treatment for a pretty long period. He had to avail leave for 198 days even for treatment and to complete the rest period. It is also submitted that he had to undergo three major surgeries. The percentage of disability going by the certificate issued by the Doctor is 30%. But the Tribunal discarded the same. It is submitted that various factors have been proved in evidence to show that his normal life has been affected due to the physical disabilities.

5. The learned counsel for the Insurance Company submitted that in this case there is no loss of earning power as far as the appellant is concerned. It is therefore submitted that no amount can be granted for loss of earning capacity and only a reasonable assessment can be made, if at all he is entitled for any enhanced compensation.

6. Ext.A7 certificate issued from the K.G. Hospital,

Coimbatore shows that he was admitted on 2.7.1997 and was discharged on 16.07.1997. The list of injuries are :

> Lacerated wound chin 3 x 2 x 2 cm., fracture left humerus and fracture left femur. X-ray of left thigh showed that there is comminuted fracture upper 1/3rd of femur and distal 3rd of femur."

7. Ext.A8 certificate issued by the same hospital shows that he underwent three major operations, they are :

1. Fracture femur distal end - for which DCS
2. Subtrochanteric fracture of femur - for which another DCS and
3. Humerus left side for which plating, were done.

8. Ext.A10 certificates includes one medical certificate dated 3.6.1999 issued by the consultant Orthopaedic Surgeon in the hospital at Madras. It is stated therein that the appellant has undergone a open reduction and internal fixation for non union subtrochanteric fracture left femur on 7.11.1998. The certificate dated 23.11.1998 issued by the same doctor will show that the appellant had undergone a open reduction internal fixation (Intra Medullary Nailing) and Bone grafting for non union fracture shaft of femur on 7.11.1998.

9. The above certificates indicate that there is nonunion of fracture as well as continuous treatment. The leave period availed of him is clear from Ext.A13 series and we have perused the certificate which is sanctioned by the Chief Assistant General Manager of the bank. The total period is 198 days.

10. The compensation granted by the Tribunal shows that for pain and suffering Rs.18,000/-, future treatment Rs.5,000/- and for loss of amenities Rs.10,000/- was granted. The question therefore is whether he will be entitled for compensation for permanent disability taking the salary as reflected in Ext.A9. He had the basic pay of Rs. 9,700/- and the gross salary shown therein is Rs.14,239.04 and the deductions are to the extent of Rs. 7843.65. The major items of compensation which the appellant claims in this appeal is for permanent disability, pain and suffering and for loss of amenities and enjoyment in life.

11. As far as special damages are concerned, Rs.1,500/- has been given for transportation, for bystander's expenses, Rs.2,400/- and for extra nourishment Rs.800/- has been granted. In the light of the fact that he had to attend different hospitals in Palakkad, Coimbatore

and Chennai, we fix an amount of Rs.5,000/- for transportation. For bystander's expenses, Rs.3,500/- is granted and for extra nourishment an amount of Rs.2,500/- is granted.

12. As far as pain and suffering is concerned, it is clear that he had suffered severe injuries and had to be in three different hospitals and he had to undergo surgeries also. The leave sanctioned is for 198 days which will show that he had been in and out of hospital also for continuous treatment and for recuperation. We fix an amount of Rs.50,000/- towards pain and suffering.

13. The next main component is loss of amenities and enjoyment in life. Even going by the disabilities he has suffered there is shortening of one leg by one inch and the femur fracture has caused difficulties. We have gone through the evidence of PW1. He has stated that the he is unable to travel as before or undertake any physical exertion. Therefore, we grant an amount of Rs.50,000/- towards loss of amenities and enjoyment in life also. We also notice that the appellant had spent Rs.2,85,000/- for treatment expenses, which have been reimbursed by the Bank. It will show that he had been under constant and expensive treatment for a long period. This

will support the case of the appellant for grant of amounts towards pain and suffering, loss of amenities, which we have already assessed. As far as partial loss of earnings is concerned, we award an amount of Rs.84,000/- i.e. for a period of 6 months covered by the leave period.

14. The learned counsel for the Insurance Company submitted that for calculating the amount towards permanent disability, over all assessment alone is required as there is no loss of earning power. The certificate issued by the doctor shows 30% permanent disability. The details as to whether he had improved later or whether the non union has resulted in any positive development which has the result of reducing the percentage of disability is not clear from evidence. Of course there is no functional disability also. Therefore, we will be justified in taking 15% as the percentage of disability for assessment of compensation. The multiplier being 13, the amount of compensation will be Rs. 3,27,600/- (14000 x 12 x 13 x 15%).

15. Accordingly, the total compensation is refixed in the following manner :

Head of claim	***Amount Awarded in rupees***
Transportation	5000

Head of claim	*Amount Awarded in rupees*
Bystander's expenses	3500
Extra nourishment	2500
Damage to clothing	800
Pain and suffering	50000
Future treatment	5000
Loss of amenities and enjoyment in life	50000
Permanent disability	327600
Partial loss of earnings	84000
Total	5,28,400/- (Rupees five lakhs twenty eight thousand four hundred only)

16. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount with interest less the amount already deposited before the Tribunal within three months. We permit the appellant to withdraw the amount once it is deposited.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

sv. **K.P.JYOTHINDRANATH,JUDGE**