

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. 294 of 2011 ()

AGAINST THE AWARD IN OPMV 657/2005 of M.A.C.T.,PUNALUR

APPELLANT/PETITIONER:

BEENA THOMAS @ BEENA JOHNSON,
W/O.JOHNSON, MIRAPPUVILA PUTHEN VEEDU, CHEPRA P.O.
VILANGARA, NEDUMANCAVU MURI, UMMANNOOR VILLAGE
KOTTARAKKARA, FROM VALIYAVILA VEEDU, PALLIYARA WARD
MULAVANA VILLAGE, KOLLAM TALUK.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS/RESPONDENTS

1. E.SHAJAHAN, S/O.IBRAHIMKUTTY,
PUTHUMANGALAM, SOORANADU NORTH P.O., KARUNAGAPPALLY.
690 561

2. SHANAVAS,
S/O.SULTHAN, SHYNI MANZIL, KANNANALLOORCHERI
THRIKKOVILVATOOM VILLAGE.691 506

3. NATIONAL INSURANCE COMPANY LTD.,
CHENNAI. HEAD OFFICE 623003

4. J.SREEKUMAR,
S/O.JANARDHANA KURUP, ESWARI SADANAM, KADAVOOR
PERINADU P.O., KOLLAM.691 601

5. M.SANTHOSHKUMAR,
S/O.MURALEEDHARAN PILLAI, EDATHANADU VEEDU, NEERAVIL
P.O. PERINAD, 691 601

6. THE NATIONAL INSURANCE CO. LTD.,
HOSPITAL ROAD, KOLLAM.691001

R-6 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION 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.294 OF 2011

Dated this the 5th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant, injured. She was aged 23 at the time of the accident which occurred on 20.9.2003. She was travelling in a bus from Anchalumoodu to Ashtamudi on the said fateful day and when the bus reached near Managalathukavu temple, a lorry driven by the second respondent having Reg.No.KL-4D/1173 which came from the opposite direction hit the bus. She sustained Type III A compound fracture of shaft of humerus on her left hand and sustained fracture on the shoulder. She had to undergo treatment in the Medical College Hospital intermittently and had underwent different surgeries also.

2. Going by the plea raised by the appellant, she continued her outpatient treatment upto November 2006. At the time of the accident she was working as a Receptionist in Adudabi and had valid permit and

visa upto the year 2005. The same is supported by Ext.A8 employment certificate and Ext.A9 passport details.

3. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company.

4. As against the claim of Rs.10 lakhs, the Tribunal has granted Rs.1,44,135/-. While advancing his arguments, the learned counsel for the appellant submitted that the Tribunal has not accepted Exts.A8 and A9 for assessing the compensation. It is submitted that a notional income of Rs.3,000/- alone has been taken in spite of the evidence, namely oral and documentary. The appellant was examined as PW1 before the Tribunal and she has explained all aspects concerning her employment details, details of the injury as well as the disabilities sustained. It is submitted that from Ext.A10 disability certificate, it can be seen that the permanent partial disability - orthopaedic is 12% and neurological disability is 15%.

5. The learned counsel for the appellant further submits that the disability sustained will show that there is shortening of left arm 2.5 cms and there is malunited fracture shaft humerus (Lt) - middle third

region. There is wasting of left arm muscles 3 cm. It is therefore submitted that she cannot use her left hand for any hard job and even her appearance being affected, she will not get a job as a Receptionist. It is therefore submitted that the Tribunal went wrong in not considering the functional disability and the loss of earning power due to the above aspects. It is submitted that being a young woman, the cumulative adverse effects of all these aspects should have come into consideration for assessing proper compensation for loss of enjoyment of life, loss of amenities in life and loss of marriage prospects as well as disfigurement.

6. It is also submitted that the amount awarded towards bystander's expenses and transportation is also not properly quantified. The learned counsel further submitted that even though medical expenses have been granted as per the bills, the amount awarded towards pain and suffering is ₹15,000/- which is considerably low. It is also submitted that going by the details of continuous treatment, she was under treatment upto 31.5.2004. Therefore partial loss of earnings for the said period namely eight months should have been granted.

7. The learned counsel for the Insurance Company submitted that regarding the employment and other particulars, it was not proper to accept her claim. It is therefore submitted that the quantification of the amounts are properly done by the Tribunal.

8. Ext.A5 is the wound certificate issued by the Medical College Hospital which shows that she had sustained the following injuries :

- 1) Lacerated wound posterolateral aspect of (L) arm size 15 x 10 cm.
- 2) Tricep muscle cut
- 3) Fractured humerus visible through the wound
- 4) Excessive abrasion over left forearm with contusion above wrist.

9. Ext.A7 series are issued by the Department of Orthopaedics, Medical College which will show that she was treated by primary wound debridement and external skeletal fixator. The first spell of treatment is from 29.10.2003 till 6.10.2003. She was readmitted on 3.12.2003 and was discharged on 20/12/2003. The said certificate will show that she was treated by open reduction and DCP

as well as bone grafting.

10. Thereafter she was admitted for removal of implant which was also performed (the period is from 9.3.2005 to 15.5.2005). Ext.A7(4) which is of the year 2006 will show that there was weakness of elevating left hand at/above shoulder level and thinning of left arm muscle etc. The certificate dated 8.11.2006 will show that plate was removed after one year. It is also recorded that since then she was having difficulty in moving left shoulder and numbness over arm.

11. The disability certificate Ext.A10 is issued by the Associate Professor of Orthopaedics, Medical College, Thiruvananthapuram. The observations are the following :

- 1) Evidence of malunited fracture shaft humerus (Lt)- middle third region
- 2.) Shortening of left arm 25 cms.
- 3) Irregular, adherant scar over the anterior and posterolateral aspect of left arm.
- 4) Wasting of left arm muscles 3 cms.
- 5) Post - traumatic stiffness with limitation of abduction movement of left shoulder beyond 90⁰ and rotation movement in its terminal 15⁰

12. The orthopaedic disability is estimated as shown below :

1. Temporary disability 100% - from the date of accident for another six months.
2. Temporary disability 50% from 30.3.2004 to 31.05.2004.

13. Permanent partial disability is shown as 12%. Ext.A11 is the certificate showing neurological disability which is issued by the Doctor from the Department of Neurology, Medical College, Thiruvananthapuram. It is stated that on examination, she has 15% permanent disability and she is advised to report for periodic follow up as advised by the treating doctors. The said certificate also shows that there is weakness/deformity/wasting of left arm muscles and C5, C6 sensory radiculopathy with effect from 2/11/2006; and is continuing.

14. The Tribunal has granted compensation going by the table given below under different heads :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	18000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transportation to hospital and back0	6000
Extra nourishment	1950
Damage to clothing	1000
Expenses for medicines	24500
Bystander expenses	2925
Pain and suffering	15000
Permanent disability	77760
Total	144135

15. As far as partial loss of earnings is concerned, what is awarded by the Tribunal is for six months. The main argument is regarding non- reckoning of the employment certificate as well as income. Going by the certificate Ext.A8, the said document is of two pages. The first page is attested by Attache, Embassy of India, Abu Dhabi. The period of employment is upto 3 years. Ext.A8 is dated 5.10.1998. It is explained by the learned counsel for the appellant that the same continued even thereafter which is clear from the entires in the passport. We have verified Ext.A9 passport and the permit stamped is valid from 3.3.2002 to 2.3.2005. The relevant page shows that she was working as a Receptionist.

16. In the light of the above, there cannot be any difficulty to reckon her employment as a Receptionist in UAE. Ext.A8 will show that the accommodation as well as transportation have been provided. According to the learned counsel for the appellant the monthly payment was at 1200 dirhams which will be equal to ₹14,000/- as on the date of filing of the petition and it is also supported by the evidence of PW1 coupled with Exts.A8 and A9.

17. The learned counsel for the respondent submits that the claim is exorbitant.

18. In the light of the documentary evidence supporting her employment and other details evident from the passport, we are of the view that the employment as Receptionist has been proved in evidence. Ext.A8 is counter signed by the Embassy officials also. In that view of the matter, the question will be how the compensation will have to be arrived at.

19. Here the disabilities will really affect her career as a Receptionist. Of course she will be able to get employment in other suitable posts in India. Therefore, the occupational disability cannot be

reckoned as 100%. But the learned counsel for the appellant submits that reasonable percentage will have to be fixed by this Court which is not done by the Tribunal. Even though the learned counsel for the respondent submits that the orthopaedic disability is 12% and the neurological disability is 15%, we will have to reckon the impact of the injuries on her body so as to assess the functional disability. Various aspects discussed above will show that she will not be able to pursue her employment as a receptionist. The passport also stood cancelled. Even though the learned counsel for the appellant submits that 50% will have to be reckoned as occupational disability, we will be justified in reckoning atleast 35% as occupational disability for assessing compensation. We adopt ₹10,000/- as the monthly income and the multiplier going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** is 18. The compensation under the head of disability will be ₹7,56,000/- (10000 x 12 x 18 x 35%).

20. The next item is partial loss of earnings, which we will reckon for a period of 8 months. Thus a sum of ₹80,000/- is awarded

under the said head. As far as pain and suffering is concerned, the Tribunal has granted only ₹15000/-. The evidence show that she was under inpatient treatment and had undergone different surgeries as well as other treatment procedures and even upto November 2006 treatment continued intermittently . After considering all these aspects together, ₹75,000/- is granted towards pain and suffering. She being a young girl aged 23 at the time of the accident, the disabilities will really affect her amenities of life and enjoyment of life. There is disfiguration also, apart from shortening of the left hand. Considering all these aspects together, we award a sum of ₹1,00,000/- towards loss of enjoyment of life and amenities of life. As far as bystander expenses is concerned, what is allowed by the Tribunal is ₹ 2925/- @ ₹75/- per day for 39 days. Actually the number of days is 42 and we award a sum of ₹6300/- @ ₹150/- per day towards bystander expenses. As far as transportation expenses is concerned, the amount claimed is ₹6,000/- and what is granted is ₹3,000/-. In the light of the continuous treatment and the different occasions on which she had to go to the hospital including for review, we grant the entire amount under the

head of transportation namely ₹6,000/-.

21. Accordingly, we recompute the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	80000
Transportation to hospital and back	6000
Extra nourishment	3000
Damage to clothing	1000
Expenses for medicines	24500
Bystander expenses	6300
Pain and suffering	75000
Permanent disability	756000
Loss of amenities and enjoyment of life and disfigurement	100000
Total	1051800 (Rupees ten lakhs fifty one thousand eight hundred only)

22. The appellant will be entitled to interest @ 9% per annum from the date of petition for the enhanced amount of compensation. The appellant will also pay additional amount towards court fee for the amount awarded and the same will be recovered by the Tribunal from

the amount deposited by the Insurance Company. We direct the Insurance Company to deposit the amount within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.