

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

MACA.No. 995 of 2007 ()

AGAINST THE AWARD IN OPMV 179/2005 of M.A.C.T. TIRUR DATED
21-12-2006

APPELLANT/PETITIONER::

K.K. KUNHAMMED, S/O. KUNHI MOIDEENKUTTY,
AGED 38 YEARS, KUZHIKATTIL HOUSE, KALLATHANI
THEYYALA P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS/RESPONDENTS::

1. T. MOHAMMED NIZAR, S/O.BEERAN HAJI,
THEYYALINGAL HOUSE, OZHUR P.O., VIA TANALUR
NEAR KORAD, MALAPPURAM DISTRICT.

2. T.MOHAMMED SHAFI, S/O.BEERAN HAJI,
THEYYALINGAL HOUSE, OZHUR P.O., VIA. TANALUR
NEAR KORAD, MALAPPURAM DISTRICT.

3. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, SABKA BUILDING, THAZHEPALAM
TIRUR, MALAPPURAM DISTRICT.

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.995 OF 2007

Dated this the 10th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is the appellant. The accident occurred on 2.2.2005 while he was riding the motor cycle bearing Reg.No.KL-10R-9126 through Theyyala-Tanur public road. It collided with another motor cycle bearing Reg.No.KL-10U-6098 when the same came through the wrong side of the road and hit on the motor cycle ridden by the appellant. Evidence was adduced by the appellant before the Tribunal for claiming compensation and Exts.A1 to A13 were marked. Ext.C1 is the disability certificate issued by the Medical Board of the Medical College Hospital. The appellant claimed that he was employed as a welder and he had to close the workshop because of the continuous treatment. Even though he claimed ₹50,000/- for the loss occurred due to the closing of the work shop, the Tribunal did not award any amount since no reliable evidence was adduced to prove it.

2. The learned counsel for the appellant submits that the appellant was under continuous treatment for a period of six months and therefore it could have been presumed from the evidence that the workshop had to be closed. We cannot agree. It is a matter requiring specific proof, in the absence of which, the Tribunal could not grant any amount. The disability assessed as per Ext.C1 disability certificate is 4%. He was treated as an inpatient from 2.2.2005 to 5.02.2005. The appellant sustained abrasion on the face, fracture of shaft of right tibia and right fibula.

3. The Tribunal has granted compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport to hospital	3000
Damage to clothing	400
Expenses of bystander	400
Medical bills	24700
Extra nourishment	1500
Loss of earnings	18000
Pain and suffering	15000
Permanent disability	23000
Total	86000

4. Since the appellant was a welder according to us, the monthly income fixed at ₹3,000/- is too low and being the accident of the year 2005, we fix it at ₹4,500/-. For loss of amenities and enjoyment of life, no amount has been granted by the Tribunal. The learned counsel for the Insurance Company submitted that compensation has been granted properly under all the heads.

5. In the light of the fact that he had sustained fracture, towards loss of earnings, we grant @ ₹ 4,500/- for six months, which will come to ₹27,000/-. Since the appellant was aged 38, the multiplier will be 15 and the compensation for permanent disability will be ₹32,400/- (4500 x 12 x 15 x 4%). Towards pain and suffering, we grant a further amount of ₹5,000/- and for loss of amenities, we grant an amount of ₹15,000/-.

6. Accordingly, the compensation is recomputed in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport to hospital	3000
Damage to clothing	400
Expenses of bystander	400

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical bills	24700
Extra nourishment	1500
Loss of earnings	27000
Pain and suffering	20000
Permanent disability	32400
Loss of amenities	15000
Total	124400 (Rupees one lakh twenty four thousand four hundred only)

7. The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall 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

P.V.ASHA, JUDGE

SV.