

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

MACA.No. 1059 of 2007 ()

**AGAINST THE AWARD IN OP(MV) 509/2001 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THALASSERY DATED 01-09-2006**
APPELLANT/PETITIONER:

**PURUSHOTHAMAN K.R., S/O. RAMAN,
AGED 67 YEARS, SHALEENAM, KIZHUNNA P.O.**

**BY ADVS.SMT.K.K.CHANDRALEKHA
SRI.SUDHEESH THAROL**

RESPONDENTS/RESPONDENTS:

- 1. DURGADAS KISAM CHUGG, S/O. KISAM LAL
CHAND, CHUGG, AGED 32
HOUSE NO.4608, KRANTI NAGAR, MAKHMALA BAD NAKA
PANCHAVATI, NAZIK (DRIVER).**
- 2. M/S. MAHINDRA BY MAHINDRA LTD.,
WARLI, MUMBAI-400 018, REPRESENTED BY
ITS MARKETTING MANAGER.**
- 3. UNITED INDIA INSURANCE CO. LTD.,
MUMBAI, TRADE POLICY NO.217/31/00/00330/99, MUMBAI.**

R3 BY ADV. SRI.P.V.JYOTHI PRASAD

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.1059 of 2007

Dated this the 30th day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant/claimant was awarded a total amount of Rs.36,750/- by the Tribunal. He was aged 62 at the time of accident and while going as a pedestrian through the road he was hit down by a pick-up van on 4.9.2000. He was examined as PW1 and the Tribunal found that the driver of the pick-up van bearing registration No.MH-15 TR/B-702 was negligent in causing the accident.

2. He was working as an accountant with K.K. Brother's Shop, Kannur. Ext.A4, the 3rd page of S.S.L.C. Book shows the date of birth as 13.09.1938. The monthly income claimed as per Ext.A7 salary certificate is Rs.3,000/-. As regards the details of the injuries and the treatment undertaken, the appellant relies upon Ext.A2 wound certificate, Ext.A8 series of inpatient bills and Ext.A5 disability certificate issued by the doctor who treated him at

City Hospital, Mangalore. He was initially taken to the A.K.G. Hospital, Kannur and from there he was referred to the latter hospital. The period of treatment is from 5.9.2000 16.9.2000.

3. We have gone through the wound certificate Ext.A2. The injuries noted are (1) Deformity over left hip joint with restricted movement and contusion and (2) X-ray pelvis showed fracture to neck of the left femur.

4. He had undergone hemiarthroplasty. The doctor has assessed 25% permanent whole body disability to the left lower limb. The Tribunal has recorded in the judgment that, as per Ext.A5 disability certificate he has a restriction of 25 degree of hip movement and a shortening of 1 c.m. left lower limb. But the Tribunal held that percentage of disability assessed is highly excessive and has fixed it only at 4%.

5. Heard both sides.

6. Learned counsel for the appellant submitted that the compensation granted is too meagre considering the

seriousness of injuries, the period of treatment as well as disability.

7. Learned counsel for the Insurance Company supported the award.

8. As far as monthly income is concerned, he had claimed only a modest amount of Rs.3,000/- from his job as an Accountant in K.K. Brothers, Kannur. Even if the document Ext.A7 has not been proved by examining the person who had issued it, according to us, the claim is not exorbitant and the said amount can be accepted. The appellant was examined as PW1 also.

9. The Tribunal has assessed only a moderate amount towards compensation for pain and suffering, viz at Rs.8,000/-, Rs.4,800/- for loss of earning capacity and no amount has been granted towards loss of amenities in life and enjoyment in life. It is clear that the injuries will result in denying the normal pleasures of life and he will have to adjust with restricted movements and it may affect his functioning as an Accountant also.

10. After considering various aspects, we re-fix the compensation in the following manner:

Head of claim	Amount awarded in Rs.
Transportation expenses	5000
Bystander's expenses	2850
Extra nourishment	1000
Loss of earning	9000
Pain and suffering	15000
Permanent disability and loss of earning capacity	50400
Loss of amenities and loss of enjoyment	10000
Total	93,250 (Rupees ninety three thousand two hundred and fifty only)

Even though the Tribunal has granted partial loss of earning for two months, we fix it as for three months considering the treatment undertaken. Even though the disability going by the Doctor's assessment is 25% after considering the details of the injuries we will be justified in adopting 30% as the functional disability.

11. The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation.

12. The finding is to the effect that the Insurance Company is liable to indemnify the owner of the vehicle and we confirm the same.

13. There will be a direction to the Insurance Company to deposit the amount of compensation, with interest less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount after the same is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/