

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

MACA.No. 1164 of 2007 ()

AGAINST THE AWARD IN OPMV 1306/1997 of MACT, MAVELIKKARA
DATED 02-05-2006

APPELLANT(S)/PETITIONER:

BABYCHAN ALIAS BABU
S/O GEEVARGHESE, KOCHUPURAYIL, CHERUTHANA P.O.

BY ADV. SRI.R.GOPAN

RESPONDENT(S)/RESPONDENTS:

1. MANIYAN
KADALEEDANJI VADAKKATHIL, PALACE WARD, THEVALLY
KOLLAM.

2. THOMAS,
OFFICER, CATHOLIC SYRIAN BANK LTD., KOLLAM.

3. ORIENTAL INSURANCE CO. LTD.,
REPRESENTED BY THE DIVISIONAL MANAGER
DIVISIONAL OFFICE, THIRUVALLA.

R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1164 of 2007

Dated this the 27th day of July, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred aggrieved by the award dated 2.5.2006 in O.P.(MV) No.1306/1997 on the file of the Motor Accidents Claims Tribunal, Mavelikkara. The quantum of compensation is under challenge.

2. The facts are as follows: The appellant was aged 58 years who met with a motor vehicle accident on 20.4.1997. The appellant was riding a bicycle along N.H. 47. While so, it was hit by a car bearing Reg. No.KL-2D/6937. Appellant sustained fracture of femur, fracture of ribs and clavicle. Appellant moved a claim petition for compensation before the Tribunal. The Tribunal awarded a total sum of Rs.90,000/- and aggrieved by the same, this appeal preferred.

3. When the appeal came up for hearing, learned counsel for the appellant submitted before us that appellant was a fish vendor by

profession and was earning more than Rs.5,000/- per month. It is also the submission that even though a medical expert assessed his disability as 25%, the Tribunal took only 20% for calculation purpose. It is also the submission that the income taken for assessment is also on a lower side. It is further submitted before us that herein is a case where fracture of femur as well as ribs and clavicle were not united. As such, apart from permanent disability, his amenities are also affected. It is the further submission that even though the Doctor assessed his physical disability as 25%, the functional disability is actually 100%.

4. Learned counsel for the insurance company submitted before us that the accident occurred in the year 1997. The income of Rs.2,000/- taken for calculation is realistic and any interference in this regard is not warranted. It is also submitted that when the disability is not assessed by a Medical Board, considering the fracture and the attendant circumstances, the Tribunal took a disability of 20% for the calculation purposes.

5. In this case, it can be seen that the appellant sustained fracture of 6 to 9 ribs as well as fracture on right femur and clavicle.

It can be further seen that he was treated as inpatient at Medical College Hospital, Alappuzha from 20.4.1997 to 8.5.1997. He was treated with inter costal drainage and skin traction for fracture femur and was advised to continue traction even after discharge. The appellant also produced records to show that he continued the treatment even after discharge for a long period. After considering the nature of injuries as well as considering the fact that there was non union of femur as well as clavicle and ribs, and also the medical records available, we adopt the functional disability at 25% for calculation purposes. The monthly income is taken as Rs.2,500/-. It is also to be noted that the multiplier available, going by the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC) will be 9 by taking the age of the appellant as 60.

Therefore, the compensation is refixed as follows:

<i>Head of claim</i>	<i>Amount awarded</i>
Loss of earnings	(2500 x 6) 15000
Medical expenses	4000
Transportation	1000
Bystander expenses	6000
Extra nourishment	1200

<i>Head of claim</i>	<i>Amount awarded</i>
Pain and suffering	35000
Loss of amenities	25000
Permanent disability	(2500 x 12 x 9 x 25/100) 67500
Total	154700

(Rupees One Lakh fifty-four thousand and seven hundred only)

The enhanced compensation will carry interest at the rate of 9% per annum from the date of filing of the petition and the insurance company is directed to deposit the amount, less the amount already deposited, within a period of three months. On such deposit, the appellant will be entitled to withdraw the same.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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