

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 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 631 of 2011 ()

AGAINST THE AWARD IN OPMV 2136/2005 of M.A.C.T., PERUMBAVOOR DATED
08-12-2010

APPELLANT/PETITIONER:

JOSHY K.K., S/O KURIEN, AGED 32
KAITHARAN HOUSE, ELAVOOR, ELAVOOR P.O.
PARAKKADAVU VILLAGE, ALUVA TALUK

BY ADV. SRI.GOPAKUMAR G. (ALUVA)

RESPONDENT/RESPONDENT:

NATIONAL INSURANCE CO.LTD.,
SHRIRAM SITE OFFICE
2A, PRAKASAM ROAD
T.NAGAR, CHENNAI-600017

BY ADV. SRI.LAL K.JOSEPH
BY ADV. SRI.A.A.ZIYAD RAHMAN
ADV. SRI.V.S.SHIRAZ BAVA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.631 OF 2011

Dated this the 21st day of July, 2015

JUDGMENT

Ramachandran Nair, J.

In this appeal by the claimant, he is seeking enhancement of the compensation granted by the Tribunal. The total amount claimed was ₹5 lakhs and the Tribunal has granted ₹1,79,058/-.

2. The appellant who was a concrete worker aged 32 was riding his motor cycle bearing Reg.No.KL-08/AB 3248 through Kalady-Angamaly M.C.Road on 23.08.2005 at 1.30 p.m. Near Tolins Rubber Company at Marottichodu, the offending mini bus bearing Reg.No.KL-5/L-3776 which came from the opposite direction hit the motor cycle. He fell down on the road and sustained injuries. He was immediately taken to the Little Flower Hospital, Angamaly and was treated there as inpatient.

3. The learned counsel for the appellant submitted that the Tribunal erred in reducing the percentage of disability from 14% to 7%

and it is also submitted that the compensation granted by the Tribunal is not in tune with the disability sustained as well as pain and suffering undergone by him. Because of the disability, there is loss of amenities in life also, it is submitted.

4. The learned counsel for the Insurance Company submitted that the monthly income assessed at ₹3,000/- and the disability assessed at 7% is perfectly justified.

5. The Tribunal in paragraph 14 of the award has given the details of the injuries as collected from Ext.A5 which we reproduce below :

- “1. Fracture right femur
2. Fracture both bones right forearm (Radius,Ulna)
3. Lacerated wound lower lip
4. Lacerated wound left knee - 20 cm.
5. Fracture mandible
6. Fracture right lateral orbital wall
7. Right second tooth in the upper jaw mobile.”

6. It will show that he had sustained four major fractures.

Ext.A7 is the discharge summary issued from the hospital. He had

undergone treatment as inpatient in two different spells. The first one is from 23.08.2005 to 17.9.2005 and the second one is from 5.10.2005 to 10.10.2005. We find from the award itself that the wound debridement and fixation of right femur and right forearm was done on 23.08.2005 and again AK cast was applied on 14.09.2005. Ext.A8 will show that he had fracture of lower jaw with missing of lower canine and multiple soft tissue facial injuries. He was subjected to operation under G.A. and his lower jaw was fixed with stainless steel plates. His mobile upper lateral incisor was stabilized by dental wiring and his facial soft tissue injuries were sutured under G.A.

7. Ext.A9 disability was certificate issued by the Civil Surgeon and Orthopaedic Surgeon of Taluk Head Quarters Hospital, Perumbavoor, who was examined as PW2. The percentage of disability is assessed at 14% permanent whole body disability. It is also recorded in Ext.A9 that he has got partial ankylosis over right hip joint. Flexion and extension motion in hip is limited to an arc from 90 degree flexion to 180 degree line. Due to this the disability to the specific part is 7% and that of whole body is 3%. The findings are the

following :

“ Rotation, extension of flexion and extension motion is limited to an arc from 15 degree internal rotation to 180 degree line. Due to this the disability to the specific part is 12% and that of the whole body is 4%. Due to partial ankylosis of wrist joint, the motion is limited to an arc from 70 degree dorsiflexion to 180 degree line. Due to this the disability to the specific part is 12%, and that of whole body is 5%. The abduction is from 10 degree to 180 degree line. Due to this the disability to the specific part is 5% and that of whole body is 2%. X-ray of hip joint and wrist joint was taken and implant was in situ. Based on the above findings, PW2 assessed the whole body permanent disability of the petitioner as 14%.”

8. The Tribunal accepted the argument of the learned counsel for the respondent that the disability will be of a lesser percentage. But we find from the recordings in Ext.A9 and in the light of the fact that he had sustained major injuries and fractures that the disability assessed cannot be said to be low. At any rate, the disability will result in functional disability of equal percentage.

9. In that view of the matter, we adopt 14% as the permanent whole body disability for the purpose of assessment of compensation.

10. The next question is with regard to his monthly earnings. What is claimed is only ₹5,000/-. The accident is of the year 2005. Therefore, it cannot be said to be an exorbitant rate at all. For the purpose of assessment of compensation, we take it as ₹5,000/- itself. The evidence of PW1 will show that the appellant was a concrete worker and his statement before the Police is also to the effect that he is a concrete worker.

11. As far as pain and suffering is concerned, what is awarded by the Tribunal is ₹24,000/-. In the light of the fact that the appellant had sustained serious injuries and as he was subjected to surgery also, we fix an amount of ₹35,000/- towards pain and suffering.

12. The total compensation is refixed in the following manner:

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	15000 (5000 x 3)

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Transportation expenses	2000
Extra nourishment	3000
Bystander's expenses	7750 (31 x 250)
Damage to clothing	1000
Medical expenses	85388
Pain and suffering	35000
Loss of amenities	30000
Permanent disability	134400 (5000 x 12 x 16 x 14%)
Total	313538 Rounded off to ₹ 3,13,540/- (Rupees three lakhs thirteen thousand five hundred forty only)

13. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company has been found liable by the Tribunal which finding we confirm and we direct 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 appellant to withdraw the

amount also.

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

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.