IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 1124 of 2013 (C)

AGAINST THE AWARD DATED 17-09-2012 IN OPMV 932/2006 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

APPELLANT/PETITIONER:

JITHIN MANOJ (MINOR)
S/O.MANOJ, RESIDING AT POOVATHUR PARAMBIL HOUSE,
P.O KUNDANOOR,
THRISSUR DISTRICT. (MINOR APPELLANT REPRESENTED HEREIN BY HIS GUARDIAN FATHER MANOJ
RESIDING AT POOVATHUR PARAMBIL HOUSE, P.O KUNDANOOR
THRISSUR DISTRICT.

BY ADVS.SRI.T.C.SURESH MENON
SRI.A.R.NIMOD

RESPONDENTS/RESPONDENTS:
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1. T.M. MUHAMMED RAFI,
S/O.MUHAMMEDUNNI,
RESIDING AT THEKKATTUVALAPPIL HOUSE, KADANGODE,
THRISSUR.

2. HABEERBUR RAHMAN
S/O.IQBAL, RESIDING AT CHELUR PEEDIKAYIL HOUSE,
KARIYANNUR, THRISSUR.

3. THE NEW INDIAN ASSURANCE COMPANY LIMITED,
ORISON BUILDING, WADAKKANCHERRY ROAD, KUNNAMKULAM,
THRISSUR 680 503.

R3 BY ADV. SRI.M.JACOB MURICKAN
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03.06.2015, ALONG WITH MACA. 300/2013, THE COURT ON 22.06.2015 DELIVERED THE FOLLOWING:

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
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M.A.C.A.Nos.1124 of 2013 and 300 of 2013
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Dated this the 22nd day of June, 2015

JUDGMENT

Anu Sivaraman, J.

M.A.C.A.No.1124 of 2013

This appeal is preferred against award dated 17.09.2012 of the Motor Accidents Claims Tribunal, Thrissur in O.P.(MV).No.932 of 2006. The claimant before the Tribunal is the appellant. The averment in the claim petition is that the accident in question occurred on 22.03.2006 at 12.50 pm on the Kunnamkulam Vadakkanchery public road. The claimant was eight years of age at the time of the accident and a student of Class II. While he was walking along the public road, an auto rickshaw bearing registration No.KL-09/A-8347 owned by the first respondent and driven by the second respondent and insured with the third respondent hit against him causing severe injuries including crush injury on the left leg with fracture of both bones and neat total traumatic amputation of the leg at middle third, multiple abrasion on face, lacerated wound 2” right parietal area, lacerated wound right elbow, abrasion right knee and leg. He was treated as inpatient at the Royal Hospital, Kunnamkulam and thereafter at Westfort Hi-Tech

Hospital, Thrissur. He had undergone major surgery and was assessed by a Medical Board as having 32% percent whole body disability.

2. The third respondent alone entered appearance and filed a written statement admitting the insurance but contending that the driver did not have a valid badge and that the compensation claimed was excessive. After considering the rival contentions, the Tribunal held that the accident occurred due to the rash and negligent driving of the auto rickshaw by the second respondent and that the vehicle was covered by a valid policy of insurance issued by the third respondent. After examining the documentary evidence including the disability certificate issued by the Medical Board, the Tribunal came to the conclusion that the claimant is to be considered as having a whole body disability of 30%. Taking a notional income of Rs.2,000/- as the multiplicand and the multiplier as 15, an amount of Rs.1,08,000/- was awarded towards compensation for permanent disability. Thereafter Rs.80,000/- was awarded towards pain and suffering, Rs.75,000/- towards loss of amenities, Rs.40,000/- towards loss of earning power and disfiguration, Rs.5,000/- towards transportation expenses and Rs.20,000/- towards expenses of future treatment, Rs.9400/- towards bystander's expenses. Towards medical expenses Rs.1,46,888/- was

awarded. In the aggregate, the sum of Rs.4,48,300/- was awarded by the Tribunal. Aggrieved thereby, the appellant has come in appeal seeking enhancement of the compensation.

3. We heard Sri.P.S.Appu, learned counsel for the appellant and Sri.Jacob Muricken, learned counsel for the third respondent. The main contention urged before us was with respect to the quantum of compensation awarded under the head compensation for permanent disability. Relying on a decision of the Hon'ble the Supreme Court in **Master Mallikarjun v. Divisional Manager, The National Insurance Company Limited & Another** (2013 (3) KLJ 815), the learned counsel for the appellant would contend that an amount of Rs.4,00,000/- has to be awarded on account of permanent disability. It has been held by the Apex Court in para 12 of the above decision as follows:-

> "Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant etc. should be, if the disability is above 10% and upto 30%

to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; upto 90%, Rs.5lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10% it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalisation for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows:

HEAD	COMPENSATION AMOUNT
Pain and suffering already undergone and to be suffered in future,mental and physical shock, hardship, inconvenience and discomforts,etc. and loss of amenities in life on account of permanent disability.	Rs.3,00,000/-
Discomfort, inconvenience and loss of earnings to the parents during the period of hospitalisation	Rs.25,000/-
Medical and incidental expenses during the period of hospitalisation for 58 days	Rs.25,000/-
Future medical expenses for correction of the mal union of fracture and incidental expenses for such treatment	Rs.25,000/-
TOTAL	Rs.3,75,000/-”

4. Going by the above decision, the appellant herein is entitled to be awarded a consolidated sum of Rs.4,00,000/- as compensation for disability, since the Medical Board has assessed the appellant as

having a disability of 32% and we find no justification for a departure from the disability assessed by the Medical Board. The claimant would be entitled to a total compensation of Rs.4,00,000/- towards disability, loss of amenities and pain and suffering. Thereafter the actual expenses including medical bills, bystanders expenses, extra nourishment and expenses for future treatment have to be calculated. Since, this is a case of amputation of the left leg and it is evident that revascularisation and lengthening has been done on that leg, it is clear that prolonged future treatment will be necessary for the child. In the above circumstances, we are of the opinion that the amount of Rs.20,000/- granted by the Tribunal towards future medical treatment is too low and the claimant is entitled to be awarded Rs.50,000/- under that head. Further, no amount has been awarded towards extra nourishment for a 8 year old child who has undergone a traumatic amputation and 8 surgeries for reattachment of the limb. We think it is only just and proper to award at least Rs.5,000/- under that head also. The appellant/claimant is thus entitled to compensation as shown below.

Sl. No.	*Heads*	*Amount (in Rs.)*
1	Whole body disability (32%)	Rs.4,00,000/-
2	Medical Expenses	Rs.1,46,888/-
3	Future Treatment	Rs.50,000/-
4	By-stander expenses	Rs.9,400/-
5	Transportation expenses	Rs.5,000/-
6	Extra nourishment	Rs.5,000/-
	Total	**Rs.6,16,288/-**

In the above circumstances, we hold that the appellant is entitled to an enhanced compensation of Rs.1,67,988/- as computed above. The said amount will carry interest at 9% from the date of petition till the date of deposit. The third respondent insurer is directed to deposit in the Motor Accidents Claims Tribunal,Thrissur the aforesaid sum with interest within one month from today. Upon such deposit being made the sum of Rs.2,00,000/- shall be released to the guardian of the claimant and the balance amount shall be kept in fixed deposit in a nationalised bank until the claimant attains the age of majority.

M.A.C.A.No.300 of 2013

This is an appeal filed by the respondent insurance company from the same award which is the subject matter of M.A.C.A.No.1124 of 2013. The insurer, who alone had filed a written statement and resisted the claim petition, has filed this appeal aggrieved by the quantum of compensation awarded by the Tribunal and disputing its liability on the ground that the driver of the auto rickshaw did not have valid badge at the time of the accident and therefore, it is not liable to indemnify the insured. The point raised by the appellant is no longer res integra and is covered against the appellant by the decision of a Full Bench of this court in **National Insurance Company v. Jisha** 2015(1) KLT (FB) where it was held that the absence of badge is only a technical defect which cannot serve to exonerate the insurer. Since we have considered the award and enhanced the compensation awarded to the claimant by judgment in M.A.C.A.No.1124 of 2013, we find no grounds to entertain this appeal. The appeal fails and is accordingly dismissed. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj