

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

MACA.No. 789 of 2011 ()

AGAINST THE AWARD IN OPMV 952/2008 of M.A.C.T., PALAKKAD DATED
23-12-2010

APPELLANT/PETITIONER:

MANIKKAN, S/O. KUNJAN, AGED 57 YEARS,
KALPPATTIPALAYAM, KALLEKKADU POST, PALAKKAD.

BY ADV. SRI.K.P.BALAGOPAL

RESPONDENTS/RESPONDENTS:

1. K.R.BHAVADAS, S/O. RAMAN, AGED 51 YEARS,
VALSALA NIVAS, S.N.NAGAR, MALAMPUZHA.P.O.
PALAKKAD.678 041

2. AJEESHKUMAR, S/O. A.K.CHANDRAN, AGED 29
YEARS, APPATTU VEEDU, NILA NAGAR
EDATHARA, PALAKKAD 678 041

3. NATIONAL INSURANCE CO.LTD.,
EAST FORT COMPLEX, FORT MAIDAN, PALAKKAD 678 001

R1-2 BY ADV. SRI.SURAJ.S

R1-2 BY ADV. SRI.V.A.RAZACK

R3 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.789 OF 2011

Dated this the 19th day of February, 2015

JUDGMENT

Asha, J.

Appellant is the injured in a motor vehicle accident which occurred on 20.2.2008 while he was walking through the road side, he was hit by a motor cycle, on account of which he sustained severe injuries, namely compound fracture of left leg and communitied fracture right leg.

2. The appellant underwent treatment as inpatient for a period of 55 days in intermittent spells. His disability was assessed by the Medical Board as 8%. The claim petition was filed seeking compensation to the tune of ₹1,75,000/-. He has claimed that he was working as a head load worker earning monthly income @ ₹3,000/-. The Tribunal awarded a sum of ₹38,000/- reckoning the disability as 4% and the monthly income as ₹2,500/-.

3. This appeal is filed seeking enhancement of compensation.

The learned counsel for the appellant submits that the Tribunal has not awarded any amount towards medical expenses even though Ext.A13 series of medical bills were produced in support of the claim. Similarly it is also stated that the Tribunal has not awarded any amount towards bystander expenses. The amount awarded under other heads are also stated to be inadequate.

4. We heard the learned counsel appearing for the Insurance Company who opposed the claim for enhancement.

5. We have gone through the medical bills Ext.A13 series and found that the appellant has incurred a sum of ₹20,188.95/- as against the claim raised before the Tribunal for a sum of ₹30,000/-. We award the same. In addition to that as per the discharge certificates Exts.A9 and A10, it is seen that the appellant underwent inpatient treatment for a period from 21.2.2008 to 16.03.2008 and thereafter from 31/12/2008 to 28/1/2009. He underwent two surgeries on 21/2/2008 and 19/1/2009. The Tribunal has not awarded any amount towards bystander expenses, even though a sum of ₹15,000/- was claimed. As the accident occurred in the year 2008 and the appellant underwent

treatment for a period of 55 days, we award a sum of ₹11,000/- towards bystander expenses. The Tribunal has awarded a sum of ₹17,000/- towards pain and suffering. It is seen that the appellant suffered fractures on both his legs and he underwent treatment for a period from 21.02.2008 to 28.1.2009 on intermittent spells as inpatient himself. Considering the agony and discomfort experienced by the appellant on account the injuries suffered on both the legs, we award a sum of ₹40,000/- under the head of pain and suffering.

6. Under the head of permanent disability, the Tribunal has awarded a sum of ₹13,200/- reckoning his monthly income as ₹2,500/- and disability as 4%. The appellant was working as a head load worker . What the appellant had claimed was only ₹3,000/- per month. Having regard to the wage structure prevailing at the relevant time, we reckon his income @ ₹3,000/- per month as claimed by the appellant. The disability certificate shows that there is 8% disability on account of the fractures sustained by him. Therefore we recalculate the compensation under the head of permanent disability as ₹31,680/- (3000 x 12 x 11 x 8%).

7. The Tribunal has not awarded any amount towards loss of earnings. Because of the fracture sustained on both the legs, the appellant would have been unable to undertake any work atleast for a period of three months. Therefore we award a sum of ₹9,000/- under the head of loss of earnings. We do not find any ground to modify the compensation awarded under other heads.

8. Therefore, the award of the Tribunal is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical expenses	20188.95
Bystander's expenses	11000
Pain and suffering	40000
Permanent disability	31680
Loss of earnings	9000
Transportation	1000
Damage to clothing	500
Loss of amenities and inconveniences	6000
Total	119370

9. The enhanced amount will carry interest @ 9% per annum.

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.

