

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 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 793 of 2011 ()

AGAINST THE AWARD IN OPMV 67/2008 of M.A.C.T.,KOZHIKODE DATED
07-06-2010

APPELLANT/PETITIONER IN THE OPMV:

ANOOP ZACHARIAHS @ ANOOP, S/O.SAKKARIYA,
AGED 36, THIRUVELIKUNNEL VEEDU, PASKKADAVU POST
KOZHIKODE.

BY ADVS.SRI.GEORGE KARITHANAM VARGHESE
SRI.JOSE KURIAKOSE (VILANGATTIL)

RESPONDENTS/RESPONDENTS IN THE OPMV:

1. DR.SHIBU GEORGE MATHEW (OWNER) ,
AGE NOT KNOWN, 6/310 A, MALLARKANDY
YMCA CROSS ROAD, KOZHIKODE-673 001.

2. P.ABID (DRIVER), AGED 28 YEARS, S/O.
SIDDIQUE, KOZHITHUMAL HOUSE, UMMALATHUR THAZHAM
MLA ROAD, KOVOOR, MEDICAL COLLEGE POST
KOZHIKODE-673 008.

3. THE ORIENTAL INSURANCE COMPANY LIMITED,
1ST FLOOR, KINGSWAY BUILDINGS, MAVOOR ROAD
JUNCTION, KOZHIKODE-673 661.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
R1 & 2 BY ADV. SRI.H.SIVARAMAN
R1 & 2 BY ADV. SRI.MATHEW CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.793 OF 2011

Dated this the 1st day of September, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the injured claimant in O.P.(MV) No.67/2008 on the file of the Motor Accidents Claims Tribunal, Kozhikode. The quantum of compensation awarded is under challenge in this appeal. The relevant facts are as follows :

While the appellant was riding a motor bike, a car bearing Reg.No.KL 11 S 8579 came from the opposite side and hit against the motor bike and in that accident the appellant/claimant sustained fracture injuries. He was initially admitted at M.K.Haji Orphanage Hospital and thereafter treated at Medical College Hospital, Kozhikode. He filed a claim for compensation before the Tribunal claiming a total compensation of ₹2,50,000/-. The Tribunal only awarded ₹ 57,083/-. Aggrieved by the said award, this appeal preferred.

2. When the appeal came up for hearing, the learned counsel

for the appellant submitted before us that here is a case where the appellant sustained grade I open fracture shaft of femur. He was treated for the injuries for more than one year. It is the submission that he was treated as inpatient for a total period of 27 days. It is also submitted before us that he had underwent two operations. It was a case of non union and as such he suffered a lot. It is also the submission that he was working at AMLP School, Valiyora. He also produced a certificate showing his details of salary. It is also submitted before us that the documents produced will show the nature of the treatment given to him. The Tribunal has not appreciated the documents properly. It is the submission that actually it is a case where there was disability, but no disability certificate produced. His amenities are also affected by the injuries.

3. We heard the learned counsel for the Insurance Company. The learned counsel for the Insurance Company submitted before us that here is a case where the Tribunal awarded just compensation. It is also submitted before us that the documents produced to show the availing of leave will show that the total period on leave will also

cover the holidays, summer holidays, Ramzan holidays. It will also show that he had joined the school during the treatment period and drawn salary. Thus the submission made before us is that actually the leave without allowance alone can be considered as he was drawing salary during the other leave period.

4. It is a case where the appellant sustained fracture shaft of femur. He was initially treated in M.K.Haji Orphanage Hospital. Ext.A3 shows that x-ray confirmed the fracture and the appellant was referred to a higher centre for treatment. On 23.4.2007 itself he was seen admitted in the Medical College Hospital. He was discharged from therein only on 3.5.2007. The treatment given shows ORIF with ILN. It can be seen that in the column of diagnosis it is written as Grade I open fracture SOF. Ext.A7 also shows that he was again admitted in the Medical College Hospital on 13.8.2007 and discharged only on 18.8.2007. He had underwent a operation on 16.8.2007. In the column diagnosis it is noted as delayed union. The appellant is again admitted in the hospital on 28.1.2008. He was discharged only on 7.2.2008. Thus it can be seen that he was treated as inpatient for a total

period of 27 days. Considering Ext.A5 pay certificate, his basic pay can be seen as ₹7,990/-. Thus it will be only just and proper to take ₹8,000/- as his monthly income after considering the deductions. It can be further seen that he availed about six months leave without allowance. In a case of fracture of femur, it will be only just and proper to award loss of income for a period of six months. Thus we are granting loss of income for a period of six months taking the monthly income at ₹8,000/-. After going through the award, we feel that modification in some other heads are also warranted.

5. Thus, the just compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Bystander's expenses	7100 (27 x 300)
Extra nourishment	2700
Loss of earnings	48000
Treatment expenses	30998
Pain and suffering	50000
Transportation	6000
Partial loss of amenities	10000
Future treatment exp.	15000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Total	169798 Rounded off to ₹1,69,800/- (Rupees one lakh sixty nine thousand eight hundred only)

6. The enhanced compensation will carry interest @ 9% per annum. The Insurance Company shall deposit the amount with interest less the amount already deposited before the Tribunal within a period of three months. On deposit, the appellant is entitled for release of the amount.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.