

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

MACA.No.126 of 2014 ()

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AGAINST THE AWARD IN OPMV 759/2010 of MACT PALA
DATED 06-07-2013
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APPELLANT(S)/PETITIONER :

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BIPIN SOMAN
S/O.SOMAN, CHAMAVILA HOUSE, NEAR BOYCE ESTATE
MULAMKUNNU KARA, KOKKAYAR VILLAGE
NOW RESIDING AT AMBATTU HOUSE, POOVARANY P.O.
MEENACHIL TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT(S)/RESPONDENTS:

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- 1. VINEESH
S/O.VIJAYAN, PUTHENPURACKAL HOUSE, MANGAPPARA BHAGOM
MANGAPPARA KARA, EDAKKUNNAM VILLAGE, EDAKKUNNAM P.O.
KOTTAYAM DISTRICT - 686 512.**
 - 2. SINDHU
W/O.SURENDRAN, PUTHUPARAMBIL HOUSE
YENDAYAR P.O.KOTTAYAM DISTRICT - 686 514.**
 - 3. THE ORIENTAL INSURANCE CO.LTD,
REP. BY ITS DIVISIONAL MANAGER, KOTTAYAM.**

**R3 BY ADV. SRI.MATHEWS JACOB (SR.)
ADV. SRI.P.JACOB MATHEW
SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

VS

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

M.A.C.A.No.126 of 2014

Dated this the 9th day of March, 2015

JUDGMENT

P.V.ASHA, J

The appellant met with a motor vehicle accident on 14.5.2010, when the motorcycle on which he was traveling was hit by an autorikshaw. He was sustained injuries and immediately taken to hospital. He underwent treatment for a period of 8 days in Medical College Hospital and thereafter for a period of 14 days in Chazhikkattu Hospital, Thodupuzha and Holly Family Hospital, Muthalakkodam for a period of another 14 days in 2012. The injuries sustained were fracture shaft of femur left, fracture of tibia left and patella left. Apart from that, he sustained fracture of both bones of left forearm. His disability was assessed as 18%.

2. He filed claim petition seeking compensation to the tune of Rs.10,00,000/-. The tribunal awarded a sum of Rs.3,35,000/- only. This appeal is filed seeking

enhancement of compensation.

3. Heard the learned Counsel appearing on both sides. The learned Counsel for the appellant submitted that the compensation awarded by the tribunal under various heads are thoroughly inadequate and income reckoned is too low. The appellant was working as an electrician. The learned Standing Counsel submitted that the award passed by the tribunal is just and reasonable and no enhancement is necessary. It is further submitted that the tribunal has awarded compensation under the head of permanent disability as well as loss of earning capacity, which is impermissible.

4. The appellant is an electrician. He was aged 29 years at the time of accident. Tribunal fixed his monthly income as Rs.5,000/-. At the same time, percentage of disability was taken as 10% only. In Ext.X1 Disability Certificate, the disability was certified as 18%. We do not find any justifiable reason for not accepting the percentage of disability as found in the certificate. Therefore, we are re-computing the compensation towards permanent disability, reckoning the disability as

18%. Therefore, compensation under the head of permanent disability will come to Rs.1,83,600/- ($5000 \times 12 \times 17 \times 18 / 100$). It is seen that the tribunal has awarded a sum of Rs.4,000/- alone towards bystander expenses, reckoning the number of in-patient treatment as 20 days. From the records of treatment It is seen that the appellant underwent inpatient treatment in the Medical College for 14.5.2010 to 21.5.2010, in the hospital at Chazhikattu from 4.1.2011 to 17.1.2011 and thereafter in Holly Family Hospital, Muthalakodam from 8.10.2012 to 21.10.2012 i.e a total period of 36 days. At the rate of Rs.250/- per day, he will be entitled to a sum of Rs.9,000/- towards bystanders expenses. Tribunal has not awarded any amount towards damage to clothings and articles. We award a sum of Rs.500/-towards the same. The tribunal has awarded a sum of Rs.35,000/- towards pain and sufferings. The appellant sustained very severe injuries including fracture of femur, tibia, patella, left forearm etc. and he underwent different procedures of treatment for a very long period in different hospitals. Having regard to the grievous nature of injuries, the prolonged treatment

undergone and the discomfort and inconvenience he suffered, we enhance the compensation towards pain and sufferings to Rs.50,000/-. The Tribunal has awarded a sum of Rs.51,000/- towards the loss of earning capacity, which we convert as compensation towards loss of enjoyment and loss of amenities of life, as appellant will not be able to enjoy the normal amenities of life as he was enjoying before the accident, on account of the disabilities incurred. The award passed by the tribunal is modified as follows.

<i>Part I</i>	<i>Amount awarded by Tribunal</i>	<i>Amount modified</i>
Loss of earnings	30,000/-	30000
Transport to Hospital	22,000/-	22000
Extra-nourishment	3,000/-	3000
Damages to clothing		500
Treatment expenses	88,000/-	88000
Bystander expenses	4000	9000
Pain and suffering	35,000/-	50000
permanent disability	1,02,000/-	1,83,600 (5000x12x17x18/100)
Loss of earning capacity	51,000/-	
Loss of amenities & enjoyment of life		51000
Total	3,35,000	4,36,600

Therefore appellant will be entitled to a total compensation of Rs. 4,36,600/-. Enhanced compensation

will carry interest @ 9% interest per annum from the date of the petition. The insurance company is directed to deposit the amount as per the modified award less the amount already deposited, within a period of three months.

The appeal is accordingly allowed. The parties will bear their respective costs.

Sd/-
T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-
P.V.ASHA, JUDGE

/TRUE COPY/

PA TO JUDGE

VS