

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

MACA.No. 1365 of 2007 ()

**AGAINST THE AWARD IN OP(MV) 552/1996 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,KALPETTA DATED 15-09-2004
APPELLANT/PETITIONER:**

**NASEEMA, AGED 18, D/O. BIYYAKUTTY
PARAKULANGARA HOUSE, PANNIPARA P.O., EDAVANNA
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.GRASHIOUS KURIAKOSE
SMT.CELINE JOSEPH**

RESPONDENTS/RESPONDENT NOS. 2 & 5:

**1. M.D., K.S.R.T.C.
THIRUVANANTHAPURAM.**

**2. NATIONAL INSURANCE CO. LTD.,
JAIL ROAD, KOZHIKODE.**

**R1 BY ADVS. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.
SRI.JOY GEORGE, SC, K.S.R.T.C.**

**R.2 BY ADVS. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
08-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.1365 of 2007

Dated this the 8th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant who was a minor at the time of accident is seeking enhancement of the compensation. She sustained injuries on 28.4.1995 while she was travelling in a K.S.R.T.C. bus bearing registration No.KL-15/787 from Kozhikode to Kalpetta. At Koduvally it collided with a private bus bearing registration No.KL-11/C 8719. She sustained severe injuries to her abdomen, liver, diaphragm, visara and uterus. A total compensation of Rs.2,50,000/- was claimed and Rs.84,000/- was awarded by the Tribunal.

2. Before the Tribunal the owners and drivers of both the vehicles and the Insurance Company viz. 5th respondent were impleaded. The Tribunal found that both vehicles are equally negligent and the liability was divided equally at 50:50.

3. The learned counsel for the appellant submitted

that the injuries were very serious. She was treated as inpatient in the Medical College Hospital for 22 days. The Tribunal in spite of finding the disability at 30% did not award amount properly and only Rs.50,000/- was awarded towards disability, Rs.25,000/- towards pain and suffering and Rs.9,000/- for transportation, medical expenses, bystander's expenses and extra nourishment.

4. Heard both sides.

5. The appellant was obviously a child aged 6 at the time of the accident.

6. After hearing the learned counsel for the appellant and the learned Senior Counsel for the 2nd respondent, we are of the view that the appellant is entitled to be granted proper compensation in the light of the decision reported in **Master Mallikarjun v. Divisional Manager, National Insurance Co. Ltd & Anr. [2013 (3) KLJ 815]** wherein the Apex Court held that if the disability is above 10% and upto 30% Rs.3 lakhs can be awarded under various heads together namely disability, pain and

suffering and loss of amenities. Further amounts that can be granted are towards actual expenditure for treatment and attendant etc. According to the learned counsel for the appellant, the disability will be more and for a due assessment by a competent Medical Board I.A.No. 2248/2015 has also been filed. But at this distance of time, we are not inclined to grant the prayer of the appellant for another medical examination. Being a child she was not an earning member and therefore it would be appropriate to assess the compensation in the light of the decision cited supra. Therefore, as far as the amount of compensation is concerned, we award Rs.3 lakhs towards permanent disability, loss of amenities, pain and suffering, and other heads for damages. The Tribunal has awarded a total amount of Rs.9,000/- towards transportation charges, expenses of bystander, extra nourishment and damage to clothing, which we confirm. Accordingly, the total compensation will be Rs.3,09,000/- (Rupees three lakhs nine thousand only).

7. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

8. The liability to satisfy the award will be equally as far as the respondents herein are concerned. Therefore 50% of amount have to be borne by the first respondent K.S.R.T.C. along with interest and remaining 50% by the Insurance Company along with interest. There will be a direction to the respondents to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On deposit, the appellant will be entitled for the release of the amount. The Tribunal will recover any amount payable towards court fee for the total amount awarded as above from the amount deposited.

9. The appeal is filed with a petition to condone delay of 757 days. But while condoning the delay a Division Bench by its order dated 24.2.2014 in I.A.No.1337/2007 made it conditional that in case the additional compensation

is granted, the appellant will not be entitled to claim interest for the above said period. We confirm the same and for the above said period no interest is liable to be paid to the appellant.

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

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/