

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 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

MACA No. 172 of 2014 (D)

**AGAINST THE AWARD IN OP(MV) NO.1285/2009 OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, VADAKARA**

APPELLANT :-

**SATHYAN, S/O.SANKARAN,
AGED 56 YEARS,
THEKKE KOYILOTYH HOUSE,
PUTHUR.P.O., VATAKARA.**

BY ADV. SRI.C.K.RAMAKRISHNAN

RESPONDENTS :-

**1. ABDULKHADER, S/O. MAHAMMOOD,
POOCHAVALLAPPIL HOUSE,
VATAKARA BEACH.P.O.,
MUKKOLA BHAGAM,
VATAKARA, PIN - 673 101.**

**2. K. LATHEEF,
ADUVATTUM THAZHA KUNIYIL,
S/O. ABDULLA HAJI,
NUT STREET, VATAKARA,
PIN - 673 101.**

**3. THE NEW INDIA INSURANCE CO. LTD.,
AL-MUBARAK BUILDING,
EDODI, VATAKARA
PIN - 673 101.**

**R1 & R2 BY ADV. SRI.ZUBAIR PULIKOOL
R3 BY ADV. SMT.A.SREEKALA
R BY SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rkj

MACA No. 172 of 2014 (D)

APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A1 : ORIGINAL MEDICAL BILLS.

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

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

M.A.C.A.No.172 of 2014

Dated this the 9th day of April, 2015

JUDGMENT

Asha, J

Appellant is the injured in a motor vehicle accident, which occurred on 16.03.2008. While he was walking through the public road, he was knocked down by a motor cycle which came in the opposite direction. He sustained very serious injuries due to the accident and was taken to the hospital immediately and underwent in-patient treatment for five days. His disability was assessed as 24%.

2. The claim petition was filed for compensation of a sum of Rs.2,30,000/-. The Tribunal passed an award for a sum of ₹76,060/-. This appeal is filed seeking enhancement of compensation on the ground that the amount awarded under various heads are inadequate.

3. We heard the learned counsel for the appellant and the learned counsel for the insurance company.

4. It is seen that the appellant sustained fracture of tibial spine and lateral tibial platen (left leg). After hospitalisation for a period of five days, he was unable to do any kind of work for a period of six months, as found by the Tribunal. It was claimed that he was a business man earning a sum of ₹12,000/- per month. The Tribunal has reckoned his monthly income at the rate of ₹4,000/-. Having regard to the cost of living and wage structure prevailing at the relevant time and the fact that there is no evidence to the contrary, we are of the view that a sum of ₹7,000/- can be fixed as his monthly income. Therefore he will be entitled to a sum of Rs.42,000/- towards loss of earnings, as Tribunal has awarded a sum of ₹24,000/- towards the same for 6 months. The Tribunal has awarded compensation under the head of loss of earning power reckoning his disability only at 8%, despite the fact his disability is assessed as 24% in Ext A4

certificate by the medical board. We do not find any reason for not adopting the disability as 24% for compensation towards permanent disability and therefore compute the same as as ₹1,81,440/- ($7000 \times 12 \times 9 \times 24 / 100$). It is seen that the Tribunal has awarded a sum of ₹10,000/- only towards pain and suffering, though the period of loss of earning is found to be 6 months. Therefore having regard to the discomforts and inconveniences that would have been suffered by the appellant, we enhance the same to ₹30,000/- .

5. The learned counsel for the appellant submitted that the Tribunal has not awarded any amount towards medical expenses, though he claimed a sum of ₹ 30,000/-. The appellant has produced the bills relating to medical/ treatment expenses before this Court. It is opposed by the counsel for the respondent, pointing out that it was not produced before the Tribunal and that some of those bills relate to other ailments unconnected with the accident . However, it cannot be disputed that

the appellant has incurred fracture and has undergone treatment incurring expenditure. A sum of ₹5,000/- will be a reasonable amount towards medical expenses and we grant the same. The award passed by the Tribunal is therefore modified accordingly as follows;

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount modified</i>
1	Loss of earnings	24000	42000
2	Medical expenses		5000
3	Byestander expense	1000	1000
4	Transport to hospital	500	500
5	Extra nourishment	500	500
6	Pain & suffering	10000	30000
7	Permanent disability	34,560 (as loss of earning power)	1,81,440
	total	76060	2,60,440/-

6. Thus the appellant will be entitled to a sum of Rs. 2,60,440/- as total compensation. The enhanced amount will carry interest at the rate of 9% p.a. from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation less the amount already deposited, within a period of

three months from the date of receipt of a copy of this judgment. The Tribunal shall recover the court fee if any in deficit from the amount to be deposited.

The appeal is accordingly allowed. The parties shall bear the respective costs.

Sd/-

T.R.RAMACHANDRAN NAIR
JUDGE

Sd/-

P.V.ASHA
JUDGE

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P.A. TO JUDGE