

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

MACA.No. 960 of 2011 ()

AGAINST THE AWARD IN OPMV 480/2008 of MACT VADAKARA DATED 16-06-2010

APPELLANT/PETITIONER IN OP (MV) :

SUNDAR RAJ, S/O.CHELLAN,
BICHU VILLA, AZCHAVATTAM.P.O., KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS IN OP (MV) :

1. RASHEED, S/O.MUHAMMED,
KUMBALATH HOUSE, KOOTAYI, TIRUR
MALAPPURAM DISTRICT.676505

2. VEKKALAN AZEEZ, S/O.KOORAN MUHAMMED,
MAMPURAM, MALAPPURAM DISTRICT.676503

3. THE ORIENTAL INSURANCE COMPANY LIMITED,
NARAYANA NAGAR, VATAKARA, KOZHIKODE DISTRICT.
673101

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

MACA No.960 of 2011

Dated this the 11th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant, aggrieved by the quantum of compensation awarded by the Tribunal. He was injured in an accident which occurred on 13.5.2007 while travelling in a jeep bearing Reg. No.KL-8/E 5373 from Chemmad to Cherur. The same hit against an autorickshaw bearing Reg. No.KL-10 M 6417 and he sustained severe injuries. He was treated at Orchid Hospital and Medical College Hospital, Kozhikode.

2. The appellant had sustained compound fracture of both bones of (Rt) leg and severe crush injury. According to him, he was a kooli earning a sum of Rs.4,500/- per month. As against his claim of Rs.1,50,000/-, the Tribunal has granted a sum of Rs.1,28,500/- as total compensation.

3. Learned counsel for the appellant mainly pleaded that the loss of earnings should have been awarded for one year rather than for nine months. It is also submitted that the amount awarded by taking monthly income at Rs.2,500/- requires a modification. It is further submitted that the compensation under the heads of pain and suffering, transportation expenses and loss of amenities and convenience, will have to be reasonably enhanced.

4. Learned counsel for the insurance company submitted that there is no case that the appellant has sustained any disability. Therefore, the amount awarded as of now is just and fair compensation.

5. The wound certificate, Ext.A2 shows that the appellant had severe crush injury and deformity (Rt) forearm with suspected vascular injury. Ext.A3 is the certificate dated 11.3.2008 issued from M/s. Sushrusha Hospital, Nagarcovil . It is stated therein that the appellant was admitted in that hospital on 3.10.2007 with diagnosis of non-union fractures both bones forearm (Rt) with flexer muscle and tendon injury. It also shows that there was medial and ulnar nerve injury with flexer

muscle contracture along with scar contracture of the forearm anterior aspects. The same was operated elsewhere. He was treated with open reduction and internal fixation with plates and screws and bone grafting for fracture both bones of forearm (Rt) on 2.11.2007 and was discharged on 9.11.2007.

6. The outpatient treatment continued which is evident from Ext.A4 series. Altogether, an amount of Rs.53,400/- has been granted towards medical expenses. The table given in paragraph 10 shows that he was granted a sum of Rs.20,000/- towards compensation for pain and suffering, Rs.5,000/- towards transportation charges, Rs.4,600/- towards bystander's expenses, Rs.22,500/- towards loss of earnings, Rs.15,000/- towards loss of amenities and convenience, etc. and Rs.8,000/- towards extra nourishment.

7. After having heard learned counsel on both sides, we are of the view that the income of the appellant claimed at Rs.4,500/- is reasonable, he being a kooli and as the accident occurred in 2007. It cannot be said to be exorbitant also. Therefore, as far as loss of earnings is concerned, he will be entitled for a sum of Rs.40,500/-. He

had undergone different types of treatment procedures and therefore we grant a sum of Rs.30,000/- towards compensation for pain and suffering. As far as bystander's expenses are concerned, the Tribunal has reckoned it only for 17 days inpatient treatment and it is submitted by the learned counsel for the appellant that the period from 2.11.2007 to 9.11.2007 has not been reckoned. Therefore, adding 7 more days, it will be 24days and we grant the entire amount reckoning Rs.250/- per day which will come to Rs.6,000/- and coupled with the amount of Rs.1,200/- granted for attending reviews, it will be Rs.7,200/-. As regards transportation expenses, it is submitted that he had initial treatment in Kozhikode and treatment later in Nagarcovil. Considering the fact that he had to attend the hospital for review several times, we grant an amount of Rs.7,000/- towards transportation expenses.

Therefore, the total compensation will be recomputed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court</i>
Pain and suffering	20000	30000
Transportation expenses	5000	7000

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court</i>
Bystander expenses	4600	7200 (Rs.250 x 24 + 1200 (for attending review))
Medical & miscellaneous expenses	53400	53400
Loss of earning	22500	40500
Loss of amenities and convenience	15000	15000
Extra nourishment	8000	8000
Total		161100

(Rupees One Lakh sixty-one thousand and one hundred only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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