IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

MACA.No. 967 of 2011 ( )

AGAINST THE AWARD IN OPMV 1799/2003 of SPL.C SPE/CBI-I&3 ADDITIONAL MOTOR ACCIDDENTS CLAIMS TRIBUNAL, ERNAKULAM, DATED 31-12-2009

APPELLANT(S)/PETITIONER:

K.K.AJAYAKUMAR, S/O.KUMARAN,
AGED 45 YEARS, KELAM HOUSE, EDAKOCHI VILLAGE
ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.JOSHI

RESPONDENT(S):
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1. **M.J.JOHN ZANCILAVOUSE,**
   S/O.JOSEPH, AGED 31 YEARS, MALIAKKAL HOUSE
   HOUSE NO.21/354, M.A.MASU ROAD, PERIMPADAPPU
   PALLURUTHY, COCHIN-6.

2. **NATIONAL INSURANCE COMPANY LIMITED,**
   THIRD PARTY CLAIMS CELL, 2ND FLOOR
   AJAY VIHAR BUILDING, M.G.ROAD, ERNAKULAM
   KOCHI-16.

R2 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ds

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

M.A.C.A.No.967 OF 2011

Dated this the 10th day of March, 2015

J U D G M E N T
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Asha, J.

This appeal is filed seeking enhancement of compensation. The appellant was travelling in a bus through Edacochi-Thoppumpady road on 19.4.2003, when the driver applied sudden break on account of which he lost his balance and fell down on the bonnet of the bus. He sustained very serious injuries and he was immediately taken to Goutham Hospital, Panayappilly. After a period of three days there, he was admitted in General Hospital, Ernakulam and underwent inpatient treatment for 19 days. The injuries sustained by him are contusion right shoulder, inter scapular area and right hand. The discharge card issued from the General Hospital, Ernakulam shows that he had traumatic inter vertebral disc prolapse at cervical area C5, C6 and was discharged from there on 8.5.2003. The scan report shows that the normal spinal curvature is lost; the vertebrae are normal in their signals with no focal mass or altered signal areas seen; the IV disc at C4/5, C5/6 & C6/7 levels show degenerative signals; and there is evidence of diffuse posterior and central IV disc protrusion seen at the C4/5 & C5/6 levels with bilateral nerve root compression at C5/6 level. His disability was assessed as 15%.

2. The appellant filed a claim petition seeking compensation to the tune of Rs.3,50,000/-. But the Tribunal awarded a sum of Rs.89,447/-. The learned counsel for the appellant submitted that the amount awarded under various heads are inadequate. The multiplier adopted is not correct. The age of the appellant reckoned by the Tribunal is also not correct.

3. We heard the learned counsel appearing for the insurance Company also, who opposed the claim for enhancement. It is pointed out that there were no records produced by the appellant to prove the age.

4. The Tribunal has accepted the income of the appellant as Rs.4,000/- based on Ext.A12. But observing that there is no evidence for his loss of earning, the Tribunal has taken the notional income of the appellant as Rs.2,000/- and awarded a sum of Rs. 8,000/- towards loss of earning. There is no reason for not reckoning the income based on Ext.A12. Therefore, we fix the income as Rs.4,000/- per month in the absence of any evidence to the contrary. Therefore, the compensation under the head of loss of earning is refixed as Rs.16,000/-. Similarly, the compensation under the head of permanent disability will come to Rs.1,00,800/- (4000x12x14x15/100). The Tribunal has awarded a sum of Rs.16,000/- towards pain and suffering. In view of the fact that the appellant sustained severe injuries on account of which he is found to have kept away from work and having regard to the discomfort and inconvenience he would have suffered during that period, we enhance the amount to Rs.30,000/-. Towards Attendant expenses the Tribunal has awarded only Rs.1500/-. Reckoning at the rate of Rs.150/- per day, we award a sum of Rs. 2700/- towards Attendant expenses

for a period of 18 days. The Tribunal has awarded Rs.8,000/- towards loss of amenities and enjoyment of life. We enhance it as Rs.25,000/- in view of the fact that the appellant will not be able to enjoy the normal amenities of life as was being enjoyed prior to the accident due to the spinal injuries.

5. The award passed by the Tribunal is accordingly modified as follows:

Head	***Amount awarded by the Tribunal***	***Amount modified***
Loss of earnings	8000	16000
Transportation expenses	1000	1000
Extra nourishment	500	500
Damage to clothing and articles	400	400
Medical expenses (supported by bills)	7247	7247
Attendant expenses	1500	2700
Loss of pain & sufferings	16000	30000
Loss of continuing or permanent disability	46800	100800
Loss of amenities and enjoyment in life	8000	25000
Total	**89447**	**183647**

6. The total compensation will come to Rs.1,83,647/-. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition.

7. The Insurance Company shall pay the amount, less any amount already deposited as per the award impugned, within a period of three months.

8. It is seen that there was a delay of 358 days in filing the appeal. The Insurance Company will not be liable to pay interest for the said period.

Appeal is allowed accordingly and the parties shall suffer their respective costs.

sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE.

sd/-
P.V.ASHA, JUDGE.

Ps/17/3/2015

//True copy//

PA to Judge