

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 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 982 of 2011 ()

AGAINST THE AWARD IN OPMV 528/2004 of MACT,EKM DATED 31-12-2010

APPELLANT/PETITIONER:

C.A.JOY, S/O.C.J.ANTHAPPAN,
AGED 55 YEARS, CHAKKALACKAL HOUSE, PALLICHAL ROAD
PALLURUTHY, RAMESWARAM VILLAGE, ERNAKULAM.

BY ADV. SRI.P.M.JOSHI

RESPONDENT(S) /RESPONDENTS:

1. RONEY ALEX,
AGED NOT KNOWN, S/O.ALEXANDER, VATTAMAKKAL
NEAR PARUPPU JUNCTION, THOPPUMPADY, COCHIN-5.

2. UNITED INDIA INSURANCE COMPANY LIMITED,
JOS TRUST BUILDING, P.B.NO.3544, CHITTOOR ROAD
KOCHI-35.

R2 BY ADV. SMT.D.GEETHA

R2 BY ADV. SMT.K.SHERIN MOHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.982 of 2011

Dated this the 2nd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The injured, claimant is the appellant, who is aggrieved by the inadequacy of the compensation awarded by the Tribunal. As against Rs.2,55,000/-the Tribunal has awarded a sum of Rs.60,323/-.

2. He was injured in an accident occurred on 31.12.2002. He was a pillion rider in a motorcycle bearing Reg.No.KL-7/AE-6819 and was travelling along Thevara-Ernakulam road from south to north. Near Atlantic junction the accident occurred. When the motorcycle hit the median of the road, the claimant and the rider were thrown to the road.

3. The claimant adduced evidence in the matter and Exts.A1 to A9 have been marked. The following are the injuries sustained by him.

- "1.Contusion with haemathrosis right knee.*
- 2. Fracture right patela.*
- 3. Swelling right knee.*
- 4. Tenderness right knee."*

4. According to the learned counsel for the appellant he had fracture right patela which required one surgery. He was treated as an inpatient for 17 days. It is submitted that the total

claim towards the medical treatment was Rs.24,161/- out of which only Rs.13,023/- was awarded on the reason that in the remaining bills the office seal was not seen. Out of the above amount of Rs.24,161/-, Rs.9,200/- was the Doctor's fee. It is submitted that the fact that he had undergone a surgery is not disputed. Therefore merely because of the absence of the office seal, the amount cannot be rejected. We find force in the above submission. Therefore we grant an amount of Rs.22,223/- towards medical treatment. He had been treated as an inpatient for 17 days and the amount claimed is therefore reasonable.

5. As regards the monthly income it was claimed that he was doing seafood agency business and was getting a monthly income of Rs.5,000/-. The Tribunal has only taken it as Rs.3,000/-. At the time of the accident, he was aged 49 years. Therefore it will be only reasonable to take the income as Rs.4,000/-.

6. The Tribunal found that there was 5% disability going by Ext.A9 certificate of the Medical Board. The learned counsel submitted that only 8 is taken as the multiplier whereas 13 is the multiplier going by the decision in **Sarla Verma v. Delhi Transport Corporation** [2010(2) KLT 802(SC)]. Therefore he

will be entitled to more than the amount granted by the Tribunal under the item compensation for permanent disability. As far as the attendant expense also Rs.3,000/- has been granted and we grant @ Rs.150/- per day for 17 days. For pain and suffering also, the Tribunal has granted only Rs.11,000/- and going by the period of treatment, the injuries sustained and the surgery conducted, he is entitled for reasonable enhancement. Lastly it is submitted that the disability is due to the patella injury and therefore for compensation for loss of amenities and enjoyment of life also a reasonable amount ought to have been granted.

7. The Tribunal has granted compensation as per the table given in para.11 of the award and we recompute the same in the following manner:

<i>Sl. No.</i>	<i>Head of claim</i>	<i>Amt.awarded by the Tribunal</i>	<i>Amt.modified</i>
1	Loss of earning	Rs. 9,000.00	Rs. 12,000.00
2	Transportation expenses	Rs. 500.00	Rs. 500.00
3	Damages to clothes	Rs. 400.00	Rs. 400.00
4	Extra nourishment	Rs. 1,000.00	Rs. 1,000.00
5	Medical expenses	Rs. 13,023.00	Rs. 22,223.00
6	Attendant expenses	Rs. 2,000.00	Rs. 2,550.00
7	Pain and sufferings	Rs. 11,000.00	Rs. 30,000.00
8	Compensation for continuing and permanent disability (4000X12X5/100X13)	Rs. 14,400.00	Rs. 31,200.00

<i>Sl. No.</i>	<i>Head of claim</i>	<i>Amt.awarded by the Tribunal</i>	<i>Amt.modified</i>
9	Loss of amenities and enjoyment in life	Rs. 9,000.00	Rs. 20,000.00
	Total	Rs. 60,323.00	Rs. 1,19,876.00 round off to Rs. 1,19,880.00

(Rupees One lakh nineteen thousand eight hundred and eighty only)

The appellant will be entitled to a total compensation of Rs.1,19,880/- (Rupees One lakh nineteen thousand eight hundred and eighty only). The enhanced amount will carry interest @9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months, less the amount already deposited before the Tribunal.

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

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge