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 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

MACA.No. 1391 of 2013 ()

AGAINST THE AWARD IN OPMV 270/2011 of MACT,KALPETTA DATED 11-04-2013

APPELLANT/PETITIONER

VIJESH P.K. AGED 28 YEARS
S/O.KUNHIRAMAN, PUTHIAVEETTIL HOUSE, VEMOM P O
MANANTHAVADY, WAYANAD DIST

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS/RESPONDENTS:
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1. VINOD P.J, AGED 29 YEARS
S/O.JANARDHANAN, KOOVALAMOTTAMKUNNIL HOUSE
ARATTUTHARA P O, MANANTHAVADY, WAYANAD DIST
670 645

2. JOY , AGE NOT KNOWN, S/O PAULOSE
KURISINKAL HOUSE, EDAVAKA P O, MANANTHAVADY
WAYANAD DIST

3. NEW INDIA ASSURANCE CO LTD
KALPETTA, (REP BY ITS DIVISINAL MANAGER, KOZHIKODE)

R3 BY ADV. SRI.M.RAJAGOPALAN
R1,R2 BY ADV. SRI.JESWIN P.VARGHESE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.1391 OF 2013

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Dated this the 20th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is the appellant herein. He is aggrieved by the inadequacy of compensation in an accident which occurred on 20.05.2012. He was travelling as a pillion rider in a motor bike from Kutta side to Mananthavady. The offending vehicle is a maruthi car bearing Reg.No. K13H/679 which came from the opposite side and hit the motor bike. He sustained serious injuries. He was treated in different hospitals namely the District Hospital, Mananthavady, MIMS hospital, Kozhikode as well as Ganga Medical Centre and Hospitals, Coimbatore during different occasions.

2. He was working as a Salesman in a shop by name 'Lavanya Umbrellas', Mananthavady and the monthly income claimed was ₹7,500/-. He was unmarried at the time of the accident and he claimed a total amount of ₹12 lakhs under various heads. The Tribunal has

awarded a total compensation of ₹ 763,500/-.

3. We find from the award that the claimant adduced evidence by examining the employer as PW1 and Exts.A1 to A13 documents have also been produced. Ext.C1 is the disability certificate issued by the District Medical Board, Wayanad which shows the percentage of disability as 40%.

4. By taking his monthly income only as ₹4,000/-, the compensation has been awarded towards permanent disability which according to the learned counsel for the appellant is inadequate. According to the learned counsel, the evidence of PW1 should have been accepted by the Tribunal. It is also submitted that the compensation under other heads also require reasonable enhancement.

5. Ext.A5 is the copy of the wound certificate issued by the District Hospital, wherein the following injuries have been noted :

1. Abrasion right side of the face
2. Lacerated wound right ankle
3. Lacerated wound right side of the skull
4. Fracture shaft of femur right

5. Fracture right tibia

6. Fracture right clavicle

7. Abrasion over the right shoulder

6. He was treated as an inpatient for a period of 42 days in different hospitals. The treatment in MIMS hospital as an inpatient is from 21.05.2011 to 17.6.2011. On 22.7.2011, he was admitted in Ganga Medical Centre and Hospitals, Coimbatore and was treated there till 30.07.2011 which is supported by Ext.A6(b) certificate. Therein he was treated for another spell namely for 20 days from 23.04.2012 to 26.4.2012. Exts.A7 and A7(a) have been relied upon. Ext.A7 is the report of C.T. Scan of head. Ext.A7(a) is the photograph with regard to the surgical corrections done to the ulnar nerve.

7. The Tribunal found on an examination of the medical evidence that the appellant had sustained grievous injuries. The assessment of permanent disability is based on Mc-Bride (Body as a whole). The Tribunal has noted further that the assessment as per National Institute of Orthopedically Handicapped Scale is shown as 62%. According to the Tribunal, the said aspect is significant when

functional disability is taken into account and therefore assessment as per Mc-Bride's scale at 40% was taken.

8. The Medical Board found mild limping, wasting of thigh muscles, difficulty in squatting, sitting cross legged and kneeling. They have also noted partial branchial plexus injury right upper limb. The Tribunal verified his disability when he appeared before the Tribunal. He had stated that he is unable to lift the right arm or to do any work with the aid of the right arm. He also complained of inability to walk through uneven surface.

9. While considering the avocation and the monthly income, the Tribunal assessed various items of evidence. The appellant had produced the identity card issued by the trade union as a worker in a shop, bank card issued by the District Officer, Kerala Shops and Commercial Establishment Workers Welfare Fund Board which are marked as Exts.A12 and A13. Ext.A13 will show that he is a worker under one Samad K.V. in an establishment by name 'Lavanya Umbrellas', who was examined as PW1.

10. PW1 gave evidence to the effect that he was paying ₹300/-

per day as wages. Even though the employment and other details were accepted by the Tribunal, it was found that the wages claimed at ₹7,500/- is not convincing. Even though Ext.A10 certificate was produced, it was not accepted on the finding that the employer admitted in evidence that he is not maintaining wages register to show the wages paid to the appellant.

11. The learned counsel for the Insurance Company submitted that the assessment by the Tribunal is reasonable.

12. In a matter like this, we will have to find out whether the amount claimed is totally exorbitant or not. The Apex Court in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited (AIR 2011 Supreme Court 2951)** has laid down that "in a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time".

13. If the said test is applied, according to us, a reasonable

amount ought to have been fixed by the Tribunal. The accident is of the year 2011 and going by the wage structure it cannot be said that the claim is totally exorbitant, but a reasonable amount will have to be fixed by this Court and we will be justified in adopting ₹6,000/- as the monthly wages for assessing the compensation.

14. The table below reproduced by us from paragraph 26 of the award show the assessment of compensation by the Tribunal:

Head of claim	***Amount Awarded in rupees***
Income/notional income	4000
Loss of earning (Total)	12000
Medical and miscellaneous expenses	331200
Future treatment	10000
Bystander expenses	4200
Transportation expenses	10000
Extra nourishment	4200
Damage to clothing, etc.	500
Pain and suffering	50000
Permanent disability	326400
Loss of earning power	10000
Loss of expectation of life	5000
Total	763500

15. We have considered various aspects and have recomputed the compensation in the following manner :

Head of claim	***Amount Awarded in rupees***
Loss of earning (Total)	18000 (6000 x 3)
Medical and miscellaneous expenses	331200
Future treatment	10000
Bystander expenses	12600 (42 x 300)
Transportation expenses	10000
Extra nourishment	4200
Damage to clothing, etc.	500
Pain and suffering	60000
Permanent disability	489600 (6000 x 12 x17 x 40%)
Loss of marriage prospects	50000
Loss of amenities and inconvenience	75000
Total	1061100 (Rupees ten lakhs sixty one thousand one hundred only)

16. While considering the refixation, we have gone by the details of the injuries and the treatment undergone by him for granting

₹60,000/- towards pain and suffering. As far as compensation for permanent disability is concerned, it will have to be assessed by taking ₹6,000/- per month. The Tribunal has not granted any amount towards loss of amenities and inconvenience. It is clear that the disability will cause acute hardship to the appellant to pursue his normal avocation. He will be denied the pleasures of life including travelling and in pursuing the normal activities. Therefore we grant an amount of ₹75,000/- for loss of amenities and inconvenience. The Tribunal has granted an amount of ₹10,000/- for loss of earning power. But, since we are granting amount under the head of permanent disability, we delete the same. ₹5,000/- is awarded by the Tribunal towards loss of expectation of life. We have granted ₹75,000/- for loss of amenities and inconvenience, which will take care of loss of expectation of life also. We grant an amount of ₹50,000/- towards loss of marriage prospects. Therefore, in total the we grant an amount of ₹10,61,100/- which will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly disposed of. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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