

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 1040 of 2011 ()

AGAINST THE AWARD IN OPMV 121/2008 of II ADDL. MACT, KOZHIKODE DATED
05-03-2011

APPELLANT(S)/PETITIONER.:

ASHRAF P., S/O.KOYAMU, AGED 40 YEARS,
PADATHODY HOUSE, VENAGALAM, KOZHIKODE
NOW RESIDING, AT SEALORDS ORCHID GARDEN, VILLA NO.3
EDASSERYTHAZHAM ROAD, NEDUNGOTTOOR AMSOM
VENGERI VILLAGE, KOZHIKODE TALUK.

BY ADV. SRI.V.KRISHNA MENON

RESPONDENT(S):

1. RAFEEQUE C.H., S/O.ABDUL ASEES, AGED
NOT KNOWN , RESIDING AT KRUKKAL HOUSE
PURUMBA PAYYANNUR, KANNUR DISTRICT.
(RC OWNER OF THE CAR BEARING REGN.NO.KL-11-N-2563)

2. U.KHALID, S/O.MAMMU, AGED NOT KNOWN
RESIDING AT KOTTENDAVIDE HOUSE, KOTTEMPOYIL
KOOHUPARAMBA, KADIROOR, KANNUR DISTRICT (DRIVER OF
OF THE CAR BEARING REGN.NO.KL-11-N-2563)

3. THE NATIONAL INSURANCE COMPANY LTD,
PAYYANNUR BRANCH, PERMAL BUILDING, PERUMBA
PAYYANNUR, KANNUR DISTRICT. (INSURER OF THE
CAR BEARING REGN.NO.KL-11-N-2563)

R,R3 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1040 of 2011

Dated this the 6th day of February, 2015

JUDGMENT

Asha, J.

The appellant met with an accident on 10.8.2006 while he was travelling in a scooter as a pillion ride, a car bearing registration No.KL-11-N 2563 hit him and thereby he sustained injuries. He was admitted in Baby Memorial Hospital, Kozhikkode. On account of the fracture sustained on his right femur, abrasion over right knee and lateral malleolus, he underwent treatment in the hospital as inpatient upto 21.8.2006. Thereafter, he was again admitted on 1.8.2010 and discharged on 3.8.2010. His disability was assessed at 5%.

2. The claim petition was filed before the Tribunal seeking compensation to the tune of Rs.2 Lakhs. The Tribunal awarded a sum of Rs.1,01,803/- with interest at 7% per annum from the date of petition. Learned counsel for the appellant submitted that the award passed by the Tribunal requires enhancement as the amount awarded under various heads

are inadequate.

3. We heard learned counsel appearing for the insurance company also.

4. Shri V. Krishna Menon, learned counsel appearing for the appellant submitted that the Tribunal assessed compensation under the head of permanent disability reckoning the disability as 6% even though it was 5% as per Ext.C1 certificate.

5. We find that the Tribunal has already awarded a sum of Rs.6,000/- towards loss of earnings. The monthly income reckoned for the purpose of compensation is only Rs.3,000/-. It was claimed before the Tribunal that the appellant is a business man earning a monthly income of Rs.8,000/-. In the absence of any contra evidence and having regard to the circumstances at the time of accident, we deem it fit to fix the monthly income at Rs.4,000/-. Therefore, the compensation under the head of loss of earnings will come to Rs.8,000/-. The Tribunal has awarded Rs.1,400/- as bystander's expenses at the rate of Rs.100/- per day. We enhance the same to Rs.2,800/- reckoning Rs.200/- per day. The Tribunal has awarded only a sum of Rs.15,000/- towards pain and suffering. It is seen that the appellant was unable to carry out any avocations at least for a period of two months on account of the

injury sustained. Therefore, we enhance the compensation under this head to Rs.30,000/-. Similarly, under the head of permanent disability, the compensation is re-assessed reckoning 5% disability and monthly income at the rate of Rs.4,000/-. This will come to Rs.36,000/- (Rs.4,000/- x 12 x 15 x 5/100). Towards transportation charges, the Tribunal awarded only Rs.750/-. In view of the fact that the appellant had to undertake several visits to the hospital, we enhance the same to Rs.2,500/- and towards extra nourishment also, we award a sum of Rs.1,500/-.

Thus, the award is modified in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Transport to hospital	750	2500
Extra nourishment	750	1500
Loss of earnings	6000	8000
Bystander's expenses	1400	2800
Treatment expenses	45503	45503
Pain and suffering	15000	30000
Permanent disability	32400	36000
Total	101803	1,26,303 (rounded off to Rs.1,26,300/-)

Thus, the total compensation will be a sum of Rs.1,26,300/-. The enhanced amount will carry interest at the rate of 9% per annum from the date of petition in the light of the decision of the Apex Court in **Supe Dei (Smt) &**

others v. National Insurance Co. Ltd. and another {(2009) 4 SCC 513.

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. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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