

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

MACA.No. 110 of 2009 ()

AGAINST THE AWARD IN OPMV 10/2005 of M.A.C.T OTTAPPALAM DATED
07-07-2008

APPELLANTS/PETITIONERS IN THE OP:

1. LATHA, W/O.CHANDRAN (DIED) .

2. CHANDRAN, 45 YRS, S/O ANDYALAN VADAKKUMURI
COLONY, THONOORKKARA, CHELAKKARA (PO)
THRISSUR, DISTRICT.

3. GEETHU, AGED 19 YRS, D/O.CHANDRAN,
VADAKKUMURI COLONY, THONOORKKARA, CHELAKKARA (PO)
THRISSUR.

4. NEETHU, AGED 14 YEARS (MINOR) (MINOR
REP; BY FATHER As GUARDIAN SUPPLIMENTAL 2ND
PETITIONER CHANDRAN) .

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SMT.PREETHY KARUNAKARAN
SRI.K.RAVI (PARIYARATH)

RESPONDENTS/RESPONDENTS IN THE OP:

1. SASIKUMAR, AGED 29 YRS, S/O SANKARAN,
KALATHIL HOUSE, CHOROTTUR, OTTAPALAM PALAKKAD DIST.
(DRIVER OF THE AUTORICKSHAW NO.9D 8833 DL.1756/96/
PO) .

2. M.RAMACHANDRAN, AGED NOT KNOWN,
S/O.BALAKRISHNA PILLAI, MADATHODI HOUSE, OTTAPALAM
PALAKKAD DIST.(R.C.OWNER OF THE AUTORICKSHAW NO.
K.L.9D 8833) .

3. THE MANAGER, NATIONAL INSURANCE CO.LTD,
EAST FORT COMPLEX, FOR MAIDAN, PALAKKAD (INSURER OF
K.L.9D 8833 AUTORICKSHAW) .

R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.110 OF 2009

Dated this the 2nd day of July, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are supplemental additional petitioners before the Tribunal below. The application for compensation was filed by deceased Latha, the original petitioner who died pending the application.

2. The accident occurred on 1.11.2004 while she was travelling in an autorickshaw driven by the first respondent. When the driver lost the control of the vehicle, the autorickshaw capsized and serious injuries were caused to her. Paragraph 8 of the award shows the details of the injuries, which we reproduce below :

“ lacerated injury 2 x 0.25 x 0.25 cm sized over Lt. Eyebrow region, lacerated injury 2 x 0.25 x 0.25 cm. Sized over Rt.pinna, lacerated injury 1 x 0.25 x 0.25 cm. sized over Lt. Pinna.. X-ray Rt. ankle shows fracture lower end of tibia Rt.. ”

3. The same is recorded by the Tribunal and is supported by Ext.A5 wound certificate and Ext.A7 medical certificate. She was treated in the Aswini Hospital, Thrissur for a period of 16 days.

4. It can be seen from the injuries that she had sustained them on different areas of the body, including chest, left leg, fracture clavicle left, fracture right ankle bimalleolar, lower type of both tibia and fibula right. One of the serious injuries sustained by her is the injury to the head. It is recorded by the Tribunal that CT scan of brain showed haemorrhagic contusion right fronto temporo parietal lobe.

5. The claimants before the Tribunal contended that the deceased died pursuant to the injuries sustained in the accident on 10.07.2007 and sought for compensation on that basis. But this was not accepted by the Tribunal for various reasons. One of the reasons stated by the Tribunal is that all the medical records produced are of the year 2004 and 2006 and there is no postmortem certificate to connect the cause of death to the accident. Last of the medical certificates is Ext.A10 and the Tribunal has observed that it does not reveal that the deceased was admitted in that hospital on 23.04.2007 in connection

with the ailments consequent on the injuries sustained. Thereafter the Tribunal awarded compensation to the tune of Rs. 56,100/- in total.

6. We heard the learned counsel for the appellants and the learned counsel for the Insurance Company.

7. Even though the learned counsel for the appellants submits that the death is due to the direct cause of the accident, in the absence of any medical evidence to support the same, we cannot agree. It is submitted that actually the Tribunal had granted permission for examination by a Medical Board, but before it, she died. But absence of evidence is there as noted already. Therefore we agree with the Tribunal's view that the medical evidence do not reveal that the proximate cause for the death is the nature of the injuries sustained. But then the appellants are entitled for compensation as it would have been granted to the deceased.

8. As we have observed that the injuries were of serious nature, it would have normally resulted in physical disability also. The nature of the engagement of the deceased was as coolie worker. Evidently, she would have been incapacitated to a greater extent in

engaging herself in such manual work because of the injuries sustained. Therefore, she will be entitled for partial loss of earnings atleast for a period of six months. For the purpose of assessing compensation, we take the permanent disability as 7%. She being a coolie worker, Rs.3,000/- claimed as monthly wages is fair and reasonable also. The appellants will be entitled for compensation for pain and suffering of the deceased, partial loss of amenities and shortened expectation of life till the date of death and for permanent disability till the date of death.

9. We therefore, recompute the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Pain and suffering	40000
Partial loss of amenities and shortened expectation of life till date of death	40000
Medical expenses	22200
Bystander's expenses	3000
Transportation	1500
Extra nourishment	1500
Damage to clothing	1000
Loss of income	18000 (3000 x 6)

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Permanent disability	7560 (3000 x 12 x 3 x 7%)
Total	134760 Rounded off to Rs.134800/- (Rupees one lakh thirty four thousand eight hundred only)

10. Accordingly, we award a total compensation of Rs. 1,34,800/-, which will carry interest @ 9% per annum from the date of petition. Since the Insurance Company is found liable going by the award of the Tribunal, we confirm the same and we direct the Insurance Company to deposit the amount along with interest within a period of three months. The compensation will be shared equally among the appellants.

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

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

K.P.JYOTHINDRANATH, JUDGE