

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

MACA.No. 1660 of 2007 ()

AGAINST THE AWARD IN OPMV 2120/2001 of MACT, THRISSUR DATED
04-07-2006

APPELLANT/PETITIONER:

K.VENUGOPAL, S/O.KUNJUKRISHNAKAIMAL,
KUNNAPPILLY HOUSE, PARALAM VILLAGE
VENGINNISSERY DESOM, THRISSUR DISTRICT.

BY ADV. SRI.V.BINOY RAM

RESPONDENTS/RESPONDENTS:

1. SHAJI (R.C.OWNER) ,
S/O.PUTHIYAVEETIL HOUSE, KOORKANCHERRY PO, THRISSUR.

2. ASHOKAN, (DRIVER) , S/O.MAHADEVAN,
THAYYIL HOUSE, KOORKANCHERRY VILLAGE
KANIMANGALAM- VALIYALUKKAL DESOM, THRISSUR.

3. UNITED INDIA INSURANCE CO.LTD.(INSURER) ,
BRANCH OFFICE, THRISSUR.

R1 & 2 BY ADV. SRI.KRISHNADAS P. NAIR
R3 BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1660 OF 2007

Dated this the 18th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant before the Tribunal, aggrieved by the inadequacy of compensation. As against the claim of ₹1,74,000/-, the Tribunal awarded ₹92,080/- as shown below :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	8000
Expenses for transportation	1000
Expense for extra nourishment	500
Expense for treatment	39600
Compensation for personal assistance	2000
Compensation for pain and sufering	12500
Compensation for permanent disability	18480
Compensation for loss of amenities and enjoyment of life	10000
Total	92080

2. The appellant was working as an employee in a canteen attached to a theatre and claimed monthly income of ₹4,000/-. The Tribunal has accepted it at ₹2,000/- alone which is not justified according to the learned counsel for the appellant. It is seen from paragraph 10 of the award that he has sustained the following injuries :

“ comminuted fracture of right femur, fracture proximal phalanx 3rd, 4th and 5th finger (R), contusion and abrasion over (R) knee 6 x 1 cm, abrasion lower lip 2 cm x 1 cm., and fracture head of 5th meta carpal (R).”

3. The same is supported by Ext.A3, copy of the wound certificate. He was treated in the Metropolitan Hospital, Thrissur as inpatient for a period of 28 days. The doctor was examined as PW2 and he supported the disability certificate which showed the disability at 12%. The Tribunal has assessed it at 7% on the reason that even though the Doctor stated that he has adopted McBride scale for assessment of disability, the same is not stated in the certificate and the split up details are not available . According to us, 12% assessed is not on a higher side since the Doctor has deposed that there was limitation

of movement of right knee joint and deformity of 5th finger of right hand and there is restriction of movement of phalangeal and inter phalangeal joint of 3rd , 4th and 5th finger. Therefore, we accept the disability certificate and refix the compensation accordingly. Since he is an employee of a canteen, ₹3,000/- will be the reasonable amount for fixing the compensation. As far as bystander's expenses are concerned, we award @ ₹150/- per day which will make the amount ₹4,200/- (28 x 150). For pain and suffering, we award an amount of ₹25000/- and for loss of amenities and enjoyment of life, we grant an amount of ₹25,000/-. We award this amount in the light of the fact that he has got limitation of movement in right knee, deformity of 5th finger of right hand and his employment is in the canteen also.

4. Therefore the total compensation is recalculated as follows :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	12000 (4 x 3000)
Expenses for transportation	1000

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Expense for extra nourishment	500
Expense for treatment	39600
Compensation for personal assistance	4200
Compensation for pain and suffering	25000
Compensation for permanent disability	47520 (3000 x 12 x 11 x 12%)
Compensation for loss of amenities and enjoyment of life	25000
Total	154820

5. The amount 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 and the claimant is permitted to withdraw the amount also.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

P.V.ASHA, JUDGE