

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 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

MACA.No. 473 of 2014 ()

AGAINST THE AWARD IN OPMV 367/2007 of ADL.D.C. & MACT, THODUPUZHA
DATED 20-03-2013

APPELLANT(S)/PETITIONER:

RAJAN AGED 41 YEARS
S/O. JOHN, MALAMPARACKAL HOUSE, HELIBARIA KARA
ELAPPARA VILLAGE, HELIBARIA P.O.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA
SRI.K.J.JOSEMON

RESPONDENT(S)/RESPONDENTS:

1. SAJESH
S/O. SASI, CHAYAMKUZHY HOUSE, KULIPAY BHAGOM
HELIBARIA KARA, ELAPPARA VILLAGE, HELIBARIA P.O.
PIN-685501 (DRIVER).

2. AJOSE
S/O. ANTONEY, KURISUMKAL HOUSE, KOZHIKKANAM ESTATE
ELAPPARA P.O., PIN-685501.

3. THE UNITED INDIA INSURANCE CO. LTD.
REPRESENTED BY ITS DIVISIONAL MANAGER, MUVATTUPUZHA
PIN-686661.

R3 BY ADV. SRI.P.SANKARANKUTTY NAIR
R BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.473 of 2014

Dated this the 23rd day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellant, a daily labourer who was engaged in the activity of sand mining, aggrieved by the inadequacy of compensation. The accident occurred on 11.2.2007 while he was travelling in a jeep bearing registration NoKL.5/C3220. The vehicle was proceeding from Ramackalmedu to Heliberia and at a place called Vattupara, the jeep overturned causing injuries to the appellant. Certain other passengers in the jeep also were injured and there were five cases which were jointly tried by the Tribunal.

2. Learned counsel for the appellant submitted that the lack of assessment of functional disability of the appellant by the Tribunal is a glaring defect in the award. It is submitted that compensation has not been granted properly after taking into consideration the functional disability. It is also submitted that even though the percentage of disability reported by

the Medical Board shows 24% and the observation of the Board further is that he has restricted movement of elbow, rotatory movements of forearm and wrist movements of forearm, but the Tribunal has assessed the disability only at 20%. According to the learned counsel, this reduction was made in spite of the finding by the Tribunal in paragraph 12 that the opinion of the Medical Board will prove that there is total restriction of doing manual work with the forearm. Apart from the same, the learned counsel submitted that the compensation granted for pain and suffering and loss of amenities is also on a lesser side.

3. The documents produced before the Tribunal have been marked as Exts.A1 to A12.

4. There is a detailed consideration of the medical records in paragraph 9 of the award. The Tribunal has stated that after the initial treatment he had at St. Johns Hospital Kattappana on the same day he was referred to Medical College Hospital, Kottayam. In Ext.A2 wound certificate the following injuries were noted: (i) Badly contaminated wound 8 x 2 cm with broken bone protruding outside in left forearm; and (ii) Abrasions right hand and both legs. X-ray shows compound fracture of both bones of left forearm. He was treated by Plastic Surgeon, General Surgeon,

Anesthesiologist and Ortho I Unit Chief. The initial treatment was from 11.2.2007 to 11.4.2007 which is supported by Ext.A6 series discharge cards. Again he was admitted on 14.11.2007 and discharged on 4.12.2007 and it was noted that there is non union of fracture of both bones of left forearm. Then treatment was given by way of open reduction and fixation with DCP and bone grafting. Ext.A7 series are the outpatient tickets. On examination on 9.6.2007 it was found that clinically and radiologically fracture was not united. The same is recorded again on 19.12.2007. Again it is recorded that fracture of both bones of forearm are not united. It was checked by x-ray on 12.1.2008 and it was found that the fracture of radius bone is united whereas the fracture of ulna implant is failure. Therefore, POP cast was done for one month and on subsequent examination on 18.7.2009 it is recorded that fracture is united.

5. The Tribunal, on the finding that the injuries noted and the treatment are not disputed, awarded an amount of Rs.30,205/- for medical expenses. Before us also, there is no claim for enhancement of the said quantum. Therefore, we confirm the amount under the said head. Since the total period of inpatient treatment is 83 days and an amount of Rs.16,600/- has been granted for by-stander expenses which also cannot be said to be on

a lesser side, we confirm the same. Paragraph 12 of the award gives in a table the amounts awarded which we reproduce below:

<i>Head of claim</i>	<i>Amount awarded</i>
Loss of earning	40000 (4000 x 10 months)
Transportation	2500
Extra nourishment	10000
Bye-stander expenses	16600
Medical expenses	30205
Damage to clothing	250
Pain and suffering	25000
Disability	144000
Loss of amenities	20000
Total	288555 (rounded to 288560)

6. We have gone through the disability certificate issued by the Medical Board of the Taluk Headquarters Hospital, Thodupuzha consisting of four experts. They have found that “now he has restricted movement of left elbow, rotatory movements of forearm and wrist movements of forearm.” The entire stress is made by the learned counsel for the appellant on the above aspects to contend that the occupational disability or functional disability has not gone into assessment by the Tribunal. We find from paragraph 12 of the award that after referring to the details of disability, it was also observed that there is proof that there is total

restriction of doing manual work with the forearm. The Tribunal also accepted the case of the appellant that he is a daily labourer engaged in sand mining. The Tribunal has recorded, when he appeared there, that the length of left forearm of the appellant is less than the other arm. The statement made by the appellant that he cannot lift anything with that arm because he lacks grip to hold objects and that he cannot do work which requires application of both arms, is also recorded. After observing that even though the doctor is not examined, the disability can be taken at 20%.

7. We find that the disability certificate issued by a competent Medical Board and therefore there was no reason for reducing the disability to 20%. Apart from the same, going by the decisions of the Apex Court in **Raj Kumar v. Ajay Kumar** (2011 (1) KLT 620 - SC), the Tribunal or the court will have to find out whether the result of the disability will pave way for any functional disability of the injured also. If that be so, we will have to find out whether the claim made by the appellant that functional disability on a higher percentage will have to be accepted. In the light of the report of the Medical Board as well as the details found by the Tribunal in paragraph 12 of the judgment, we will be justified in assessing the loss of earning power at 50% and the appellant will be entitled for compensation

accordingly.

8. Even though learned counsel submitted that the monthly income awarded at Rs.4,000/- is too low, since the accident is of the year 2007 and in the light of any other evidence on this aspect, we confirm the monthly income which is assessed at Rs.4,000/-.

9. The next aspect is whether the appellant is entitled for anything further towards pain and suffering. The amount awarded by the Tribunal under this head is Rs.25,000/-. Learned counsel for the insurance company submitted that only marginal increase is claimed in the appeal and therefore this Court may not consider the claim afresh as a proceedings before the Tribunal. We cannot agree with the same, in the light of the decision of the Apex Court in **Nagappa v. Gurudayal Singh** (2003 (1) KLT 115 - SC) wherein the view taken is that there is no restriction in the court or tribunal considering various aspects to fix just and fair compensation and the constraints of the claim at a particular sum will not act as a restriction for the court or Tribunal. We will have to assess compensation in a fair manner.

10. In this case, it is seen that he was treated as an inpatient for

83 days. The injuries were of serious nature and he has sustained fractures also. Various treatment procedures were taken and he was on treatment in three different departments. Implants were put and plastic surgery was also done. In fact, learned counsel for the insurance company submitted that the treatment initially granted did not fully cure the ailments of the appellant which can be easily presumed from paragraph 9 of the judgment and hence cannot help the appellant to gain any further amounts towards pain and suffering and other heads. But in the light of the finding in paragraph 10 that the injuries sustained and the treatment given are not disputed, we will have to consider the claim in the proper manner. Therefore, we find that an amount of Rs.50,000/- can be granted towards pain and suffering. For loss of amenities, an amount of Rs.20,000/- has been granted already and since we are granting amount towards loss of earning power, we will not be justified in granting any further amount towards loss of enjoyment and amenities in life. Therefore, the compensation due is refixed 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>
Loss of earning	40000 (4000 x 10 months)	40000 (4000 x 10 months)
Transportation	2500	2500
Extra nourishment	10000	10000
Bye-stander expenses	16600	16600
Medical expenses	30205	30205
Damage to clothing	250	250
Pain and suffering	25000	50000
Disability	144000	360000
Loss of amenities	20000	20000
Total	288555 (rounded to 288560)	529555 (rounded to 529560)

(Rupees Five lakhs twenty-nine thousand five hundred and sixty only)

The appellant will be entitled to interest at 9% per annum for the enhanced amount of compensation. 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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