

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

MACA.No. 484 of 2014 ()

AGAINST THE AWARD IN OPMV 56/2011 of MACT PALA DATED 07-06-2013

APPELLANT/PETITIONER:

SARAMMA, AGED 59 YEARS
W/O.KUTTY, CHEERAMTHARAYIL HOUSE, MEMALA BHAGOM
PALLIKUNNU KARA, ELAPPARA VILLAGE, IDUKKI DISTRICT.

BY ADVS.SRI.ABRAHAM MATHEW (VETTOOR)
SMT.ELIZABETH OLIVER

RESPONDENT(S)/RESPONDENTS:

1. ANILKUMAR,
S/O.KARTHIKEYAN, KANNUMPURATHU VEEDU, BLOCK NO.195
MUNDIYERUMA KARA, PARATHODU VILLAGE, IDUKKI DISTRICT.

2. RONY PHILIP,
MANALEL HOUSE, PUTHUPPALLY.P.O, KOTTAYAM DISTRICT.

3. THE ORIENTAL INSURANCE CO.LTD,
REPRESENTED BY ITS DIVISIONAL MANAGER, KOTTAYAM.

R3 BY ADV. SRI.R.AJITH KUMAR (128/84)
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.484 of 2014

Dated this the 26th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is the appellant and the complaint is regarding inadequacy of the compensation as against the claim of Rs.6 lakhs. The Tribunal has awarded Rs.1,34,700/- as compensation. We reproduce the table shown in the award under which the amount has been granted by the Tribunal.

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earnings	Rs. 24,000.00
2	Transport to Hospital	Rs. 3,000.00
3	Extra-nourishment	Rs. 1,000.00
4	Treatment expenses	Rs. 10,000.00
5	Bystander expenses (Rs.200X137)	Rs. 27,400.00
6	Future treatment expenses	Rs. 15,000.00
8	Pain and sufferings	Rs. 30,000.00
9	Permanent disability(Rs.3000X12X9X5/100)	Rs. 16,200.00
10	Loss of earning capacity	Rs. 8,100.00
	TOTAL	Rs.1,34,700.00

2. The appellant was a coolie at the time of the accident and her age has been fixed as 60 by the Tribunal. The accident

occurred on 26.07.2010 while she was travelling in a stage carriage bus bearing Reg.No.KL-05/W-9705 from Mundakayam to Elappara when she was attempting to get into the bus, the 1st respondent gave signal to move the bus forward and the driver suddenly moved the bus forward and she fell down on the road and sustained injuries.

3. The total period of treatment is 137 days. The Tribunal found negligence on the part of the driver of the bus.

4. As regards the injuries sustained, they are minimal hemothorax both pleural cavity and fracture of ilium with separation of a fragment. She was initially admitted on 26.07.2010 and discharged on 29.07.2010. Ext.A9 is the referral casualty record of the Government Medical College Hospital, Kottayam. She was admitted thereafter in the Taluk Headquarters Hospital, Peerumedu from 29.07.2010 to 13.12.2010.

5. We heard the learned counsel on both sides. It is submitted by the learned counsel for the appellant that the income taken by the Tribunal as Rs.3,000/- is too low and the compensation awarded for pain and sufferings, permanent disability and other counts is also inadequate. The learned

counsel for the Insurance Company submitted that without any evidence Rs.15,000/- has been granted for future treatment and after granting amount towards permanent disability, for loss of earning capacity also an amount of Rs.8,100/- has been granted.

6. It is a case wherein the permanent disability reported is 5% going by the medical certificate Ext.X1. There is no entry regarding the loss of earning power there. Therefore we will have to grant amount towards permanent disability coupled with compensation for pain and sufferings and for loss of amenities and enjoyment in life. In that view of the matter, the amount granted towards loss of earning capacity cannot be sustained.

7. As regards the future treatment, the Tribunal has granted Rs.15,000/-. The reasoning in support of the same is available in para.15 of the award. The Tribunal has observed that at present she is having pain, stiffness and swelling of the right hip and right pelvic region. There is difficulty in walking and running. She was walking with limping over the right leg also. But there is no medical evidence to show the prescription for future treatment. Having regard to the various aspects pointed out by the Tribunal, we award an amount of Rs.7,500/- towards future treatment. We are of the view that since she is a

coolie worker and the accident occurred in 2010, she will be entitled to a slight enhancement in the monthly income. Considering the age of the claimant, we fix Rs.4,000/- as the monthly income even though the learned counsel for the appellant submitted that Rs.6,000/- will be the reasonable amount.

8. Therefore we recompute the compensation in the following manner:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earnings	Rs. 32,000.00
2	Transport to Hospital	Rs. 3,000.00
3	Extra-nourishment	Rs. 1,000.00
4	Damages to clothing	Rs. 500.00
5	Treatment expenses	Rs. 10,000.00
6	Bystander expenses (Rs.250X137)	Rs. 34,250.00
7	Future treatment expenses	Rs. 7,500.00
8	Pain and sufferings	Rs. 40,000.00
9	Permanent disability(Rs.4000X12X9X5/100)	Rs. 21,600.00
10	Loss of amenities and loss of enjoyment of life	Rs. 20,000.00
	TOTAL	Rs.1,69,850.00

(Rupees One lakh sixty nine thousand eight hundred and fifty only)

9. The appellant will be entitled to a total compensation of Rs.1,69,850/- (Rupees One lakh sixty nine thousand

eight hundred and fifty only). The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimant can withdraw the amount .

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

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge