

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 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

MACA.No. 510 of 2014 ()

AGAINST THE AWARD IN OPMV 1170/2007 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, PERUMBAVOOR DATED 10-07-2013

APPELLANT/PETITIONER:

ALIAS AGED 57 YEARS
MATHEW, ALUKKAL HOUSE, PONNAMPARAMBU
MECKADU KARA, NEDUMBASSERY VILLAGE
ERNAKULAM DISTRICT.

BY ADVS.SRI.ELSON SIMON
SRI.PRAMOD KOCHUTHOMMEN.E.

RESPONDENTS/RESPONDENTS :

1. POULOSE A.V
S/O. VARGHESE, APPOZHATHU HOUSE
IN FROMT OF SUBSTATION, PUTHUPPANAM BHAGAM
KINGINIMATTOM KARA, AIKARANADU SOUTH VILLAGE
ERNAKULAM DISTRICT PIN-682311.

2. THE MANAGING DIRECTOR,
K.S.R.T.C., THIRUVANANTHAPURAM-695001.

R BY SRI.SREEPRAKASH K.NAIR, SC, KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.510 of 2014

Dated this the 14th day of January 2015

JUDGMENT

Ramachandran Nair , J.,

The claimant before the Tribunal who was injured in a motor accident is the appellant herein. The accident occurred on 31.3.2007 while he was travelling as a passenger in a K.S.R.T.C. Bus bearing registration No. KL-15/4863 (TP 685). When the driver applied the break suddenly, he fell down inside the bus and sustained serious injuries. He had sustained a rupture at its insertion of the right biceps tendon elbow.

2. The case of the appellant is that he is a farmer by occupation. The injury has caused losing his flexion strength by 60% and supination strength by 50%. The Doctor has fixed total permanent disability as 20%. But the Tribunal has reduced it as 7%. It is submitted by the learned counsel for the appellant that the certificate is seen to have been issued by the Doctor who treated the appellant. Therefore, the Tribunal should have accepted 20% disability. The objection that the Doctor was not having 10 years service cannot hold good.

3. The learned counsel for the K.S.R.T.C submitted that proper compensation has been awarded. It is submitted that the evidence with regard to the disability has been properly considered by the Tribunal and adequate amounts have been granted.

4. Ext.A8 is the certificate issued by Dr. Robin Antony, Orthopaedic Surgeon of Karothukuzhi Hospital, Aluva who was examined as PW1. It is stated that injuries resulted in the patient losing the flexion strength by 60% and supination strength by 50%. The Doctor has fixed the permanent disability as 20%. It is submitted by the learned counsel for the appellant that there was no challenge regarding the percentage of disability while cross examining PW1. Hence PW1 being the Doctor who had treated the patient and as the injuries are not disputed along with the consequent disabilities, we find that the percentage of disability could have been accepted by the Tribunal. For permanent disability, the appellant claimed compensation. The appellant is a farmer by profession and also a trader in agricultural products. The Tribunal has not assessed the functional disability as such. We take the functional disability also as 20%. In that view of the matter, the compensation for disability would have to be recomputed. It will thus be Rs. $3500 \times 12 \times 9 \times 20 / 100 = \text{Rs. } 75600/-$.

4. Towards pain and suffering Rs. 8,000/- has been granted and inpatient treatment was only for a period of one day. Therefore, we do not find any reason to enhance the same. But for loss of amenities only Rs. 5,000/- has been granted. The effect of injuries on the body will affect his normal avocations and functions also. Therefore, we grant a further amount of Rs. 10,000/- towards loss of enjoyment of life and loss of amenities in life. Even though, learned counsel for the appellant submitted that for partial loss of earnings, one month's income alone has been granted, in the absence of any evidence that he was crippled or was unable to work out the normal

avocations for a longer period, we will not be justified in granting more amount. Therefore, we recompute the compensation :

<i>Sl. No.</i>	<i>Heads</i>	<i>Amt.awarded</i>	<i>Amt.modified</i>	<i>Basis</i>
1	Loss of earnings	3500	3500	
2	Partial loss of earnings	NIL	NIL	
3	Transport to hospital	500	500	
4	Extra nourishment	700	700	
5	Damage to clothes	500	500	
6	Medical expenses	666	666	
7	Pain and suffering	8000	8000	
8	Loss of amenities etc.	5000	15000	
9	Loss of earning power	NIL.	NIL	
10	Disability	26460	75600	
	Total	Rs. 45,376	104466	

5. We are of the view that the interest at the rate of 8% p.a requires modification and we fix the interest at the rate of 9% p.a from the date of petition by relying upon the decision of the apex court reported in ***Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. And Anr. [(2009)4 SCC 513]***.

6. The Insurance Company is directed to deposit the entire compensation less the amount already deposited within a period of three months.

The appeal is allowed as above. No cost.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-

P.V.ASHA
(JUDGE)

AL/-

M.A.C.A. No.510 of 2014

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True copy

P.A to Judge