IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

MACA.No. 1232 of 2011 ( )

AGAINST THE AWARD IN OPMV 165/2005 of M.A.C.T.,NEYYATTINKARA DATED 31-12-2010

APPELLANT/2ND RESPONDENT.:

THE ORIENTAL INSURANCE COMPANY LTD.
THIRUVANANTHAPURAM, REPRESENTED BY ITS
ASSISTANT MANAGER, REGIONAL OFFICE, ERNAKULAM NORTH
KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT/CLAIMANT.:

ROSE CHANDRAN, PULLUVILA PUTHEN VEEDU
KEEZHKOLLA, VATTAVILA P.O., NEYYATTINKARA
PIN-695 121.

BY ADV. SRI.R.T.PRADEEP

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23-07-2015, ALONG WITH MACA. 1685/2011, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.
- -
M.A.C.A.Nos.1232 & 1685 of 2011
- -
Dated this the 23rd day of July, 2015

JUDGMENT

Ramachandran Nair, J.

Both these appeals arise from the award in O.P.(MV) No.165/2005 on the file of the Motor Accidents Claims Tribunal, Neyyattinkara. The appeals are respectively filed by the Insurance Company as well as by the claimant. The Insurance Company challenges the quantum awarded and the claimant is seeking enhancement.

2. In the appeal filed by the claimant, the enhancement of the quantum of compensation is claimed mainly on three grounds. One is that instead of ₹3,500/- adopted by the Tribunal as the monthly income, it should have been taken as ₹6,000/- itself. The second one is that for future prospects, 50% more should have been added for quantification of the amount towards permanent disability and the third one is that the percentage of disability should be taken as 100% itself in view of the report of the Medical Board.

3. The bare details for the examination of various aspects will show that the accident occurred on 29/11/2004. The claimant, a lorry driver was walking through the side of Kulathuvila- Perumpazhuthoor public road and was knocked down by a motor cycle bearing Reg.No.KL-01-VV-668. On sustaining serious injuries, he was taken to Taluk Hospital, Neyyattinkara and thereafter was treated on the same day in the Medical College Hospital, Thiruvananthapuram. The total compensation claimed is ₹ 7 lakhs.

4. The injuries sustained by the claimant are the following :

Abrasion on forehead

Contusion right hand

Painful injury right side of scrotum

Fracture on lateral malleolus

5. The details produced by the claimant shows that he had been under continuous treatment after his discharge from the Medical College Hospital on 2.12.2004. The documents have been marked as Exts.A1 to A32. Ext.A4 is the case records. Ext.A5 is the hearing

assessment. Ext.A6 is the scan report and Ext.A14 onwards are the O.P. Reference card, O.P. Tickets, casualty card and Ext.A32 are the series of medical bills.

6. Ext.A7 is the disability certificate issued by the Medical Board. The Medical Board assessed the disability as 50% and the Tribunal after discussion of the evidence reduced it to 40%.

7. The learned Senior counsel for the Insurance Company Sri.Geroge Cherian submitted that the certificate issued by the Medical Board will not indicate the physical impairment leading to permanent disability as 100% as claimed by the claimant now. It is submitted that what is stated in the disability certificate is depressive disorder after RTA and it is further stated that the permanent disability is more than 50% and the disability is moderate. The learned Senior Counsel therefore submitted that this may be due to several reasons which need not be attributable to the injury sustained.

8. The learned counsel for the claimant Sri.R.T.Pradeep submits that the entire treatment records were made available before

the Tribunal and the Tribunal had also occasion to see the claimant and has recorded the impressions which are clear from paragraph 13 of the award.

9. We have also perused the entire medical records. It is clear from the medical records including wound certificate and the case sheets that he had been subjected to continuous and prolonged medical treatment. The injuries described have been sustained due to the accident itself as otherwise it would have been noticed by the Medical Board also. There is no contra opinion by the Medical Board in this matter. The Medical Board being a competent body of professionals in the field, unless and until there are strong reservations on their part on any aspect concerning the injuries sustained and the disability present, this Court cannot ignore the disability certificate also. In paragraph 13 of the award the Tribunal has observed that on the day when he appeared before the Tribunal, he was seen wearing hearing aid on the left ear. The claimant had submitted that his right ear is also suffering from mild hearing loss and that he cannot hear anything without

hearing aid. The learned Judge was satisfied to find that the claimant suffered from severe mental or psychological disability as well and it seems that he is suffering from total physical ill health. The claimant also claimed blurred vision and he was seen assisted by his wife in the matter of coming to the court hall and in the matter of co-operating with the court in the process of questioning etc.

10. According to us, the details available from the case records do not persuade us to accept the argument of the learned Senior Counsel for the Insurance Company that the claim of 50% disability is unsustainable. But Sri.R.T.Pradeep, the learned counsel for the claimant submits that it is a case of 100% functional disability as he cannot be expected to do the job as a driver. The depression according to the learned counsel will lead to totally physical inactivity by him. The learned counsel submits that coupled with the recording of the Tribunal, this Court can readily presume that the claimant is a person with 100% disability to do any job.

11. We have considered the rival submissions. The Tribunal

found just and reasonable to fix the permanent disability at 40% for the purpose of assessment of compensation. The reasons attributed are mental and psychological disability, incoherent behavioural patterns, hearing loss and other physical factors recorded in paragraph 14 including atrophy to the testis. But according to us, the Medical Board after examination of the physical features and the difficulties of the claimant had recorded 50% disability. There was no reason for reducing it in the absence of any other developments in the meanwhile so as to vary it. Therefore, it will be safe to adopt 50% as the permanent disability for the purpose of assessment of compensation.

12. In this context, we will also refer to the details of the treatment undertaken by the claimant. The claimant was treated in the Medical College Hospital, Thiruvananthapuram and also in the Government Dental College Hospital, Thiruvananthapuram. There was loss of one tooth in the upper jaw and treatment for the same was done for a long period as evident from Ext.A4. Ext.A5 reveals the assessment of deficiency on the hearing faculty of the claimant from

the Medical College Hospital, Thiruvananthapuram. The Tribunal recorded that three audiograms were taken in 2005 which reveal that he has minimal to moderate sensorineural hearing loss to the right ear and moderately severe to severe sensorineural hearing loss to the left ear. Ext.A6 records the colour doppler study report of the scrotum of the claimant. According to the Tribunal, since Ext.A6 is dated 4.12.2004, it reveals the proximity of the injury to the date of the accident. Ext.A30 reveals fracture to the left lateral malleolus and the same is recorded to have been managed by BK slab application.

13. The learned counsel for the claimant submitted that in the light of the injuries to the scrotum, even though he had married , the marital life is really affected which is clear from the medical certificate also. Of course, the same will be a factor to be considered while fixing amount towards loss of amenities and pleasures of life. Ext.A24 O.P. Card reveals that removal of plaster was done only on 3.3.2005. The claimant had visited the Medical College Hospital intermittently upto to the year 2006 due to various complaints which is the finding of the

Tribunal and we do not find any reason to vary the same. In fact, the medical records also showed that he had mild fracture in the left ankle. We are of the view that the physical complaints are therefore manifold, including reduced visibility and hearing loss.

14. To prove that he was a qualified driver, the claimant has produced Ext.A8 to A11. Ext.A8 is the call letter of the Kerala Public Service Commission for appearing for the test for appointment of Reserve Conductor in the KSRTC. Exts.A9 and A10 are the letters issued in the name of the claimant for selection to part time/contingent cleaner post in two different Departments of the State Government. Ext.A11 is another call letter issued by the Directorate of Fisheries for appointment as provisional driver through Employment Exchange. Therefore the claim that he was a qualified driver cannot be said to be incorrect. But as far as the monthly income is concerned, what is assessed by the Tribunal is ₹3,500/-. The learned Senior Counsel for the Insurance Company submitted that there was no documentary evidence to support the claim. The accident occurred in the year 2004.

The claimant was a lorry driver at that point of time. The claim is supported by the documents we have already mentioned as Exts.A8 to A11. The question is whether as a skilled worker, the amount claimed as ₹6,000/- could be accepted or not. In this context, we rely upon the judgment of the Apex Court in **Minu Rout and another v. Satya Pradyumna Mohapatra and others (2013 (10)SCC 695)**. That was a case of a truck driver and the accident occurred on 8.11.2004. The Apex Court while fixing the compensation for loss of dependency fixed the monthly income at ₹6,000/- in the light of the fact that he was having a skilled job of a driver. Even though the learned counsel for the claimant submits that for future prospects, 50% more should be added, in the light of the judgment of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC),** as pointed out by the learned Senior Counsel for the Insurance Company, the matter is pending consideration before the larger Bench of the Supreme Court. According to us, it will be safe to adopt ₹6,000/- itself as the monthly income for the purpose of assessment of compensation.

15. The Tribunal has awarded ₹ 40,000/- towards pain and suffering which we enhance to ₹50,000/- in the light of the continuous treatment for more than two years, even though major part is as outpatient. As regards loss of amenities, what is awarded by the Tribunal is ₹40,000/-. It is clear that the disability will affect his normal life including his marital life and he has lost the pleasures of life also. Diminution in vision and hearing loss will cripple his functions and it will also deprive him the capacity to interact with the people. These require a proper consideration for grant of amount under the head of loss of amenities and enjoyment of life and we fix ₹75,000/- towards loss of amenities and other items connected with it.

16. As far as future treatment expenses are concerned, no amount has been granted even though ₹30,000/- was claimed. It is clear that the effects of the disabilities on his body will require, atleast intermittent treatment and an amount of ₹15,000/- will be a fair and reasonable compensation. As far as loss of earnings is concerned, we grant it for six months @ ₹6,000/- and it will be ₹36,000/-. The

claimant was aged 39 at the time of the accident and therefore the multiplier going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** is 15 and by taking 50% as the disability, both physical as well as functional disability, the amount will be ₹5,40,000/- (6000 x 12 x 15 x 50%).

17. Accordingly, the total compensation is refixed as follows :

Head of claim	***Amount Awarded in rupees***
Loss of earnings	36000 (6000 x 6)
Transportation	5000
Extra nourishment	2500
Damage to clothing	1000
Medical expenses	10348
Bystander's expenses	4000
Future treatment	15000
Pain and suffering	50000
Loss of amenities and enjoyment of life	75000
Permanent disability	540000
Total	738848 Rounded off to ₹ 7,38,850 (Rupees seven lakhs thirty eight thousand eight hundred fifty only)

18. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Tribunal found that the Insurance Company is liable to satisfy the award and we confirm the same. We direct the Insurance Company to deposit the amount of compensation along with interest less the amount already deposited before the Tribunal within three months and permit the claimant to withdraw the amount also once the amount is deposited by the Insurance Company. The amount towards balance court fee will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

M.A.C.A.No.1232/2011 is dismissed and M.A.C.A.No.1685/2011 is allowed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

sv.