

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 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

MACA.No. 1245 of 2011 ()

AGAINST THE AWARD IN OPMV 452/2009 of M.A.C.T.,KOZHIKODE DATED
29-03-2010

APPELLANT/PETITIONER:

C.M.GOPI, AGED 60 YEARS, S/O APPUTTY
RESIDING AT CHATHAMBATH HOUSE, P.O.VELLIPARAMBU
KUTTIKATTUR DESOM, KOZHIKODE.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS:

1. Y.M.SHAMSUDHEEN, S/O KHALID HAJI
RESIDING AT THAIFF, POOKKAM, PANOOR
THALASSERY.670692

2. SALEEM, AGED 24 YEARS, S/O.MUSTHAFI,
CASINO MANZIL, CHALKKARA, PALLOR
MAHE.673333

3. THE ROYAL SUNDARAM ALLIANCE INSURANCE,
D1, 2ND FLOOR, AMRITHA TOWERS
KPCC JUNCTION, OPPOSITE MAHARAJA'S GROUND, M.G.ROAD
COCHIN - 682 011.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW
R3 BY SRI.MATHEWS JACOB (SR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1245 OF 2011

Dated this the 9th day of January, 2015

JUDGMENT

Asha, J.

Appellant is the injured in a motor accident which occurred on 2.8.2008. He was knocked down from the motor cycle he was riding. He was a driver by profession engaged in Kerala Transport Company, Kozhikode earning Rs.6,000/- per month.

2. Immediately after the accident, he was taken to the PVS Hospital. The wound certificate records the injuries sustained by him as Comminuted open fracture (Type III B), tibia and fibula (L) with soft tissue injuries left knee and leg. He underwent treatment there for the period from 2.8.2008 to 15.8.2008 and underwent surgery. He was again admitted in the hospital for the period from 11.5.2009 to 28.5.2009 due to non union of bones with failed implants. The injuries sustained by him and the records of treatment were produced before the Tribunal as Exts.A2, A3 and A7. It is seen from Ext.A9 and A10

reports that he continued treatment thereafter. As per Ext.C1 disability certificate, the disability was shown as 10%. The Tribunal awarded a total compensation of Rs.1,10,400/- reckoning his monthly income as Rs.2,000/-.

3. The appellant seeks enhancement of compensation on the ground that the amount awarded under various heads are thoroughly inadequate.

4. We head the learned counsel appearing on either side.

5 We find that the appellant claimed a monthly income of Rs.6,000/-. He is a driver by profession. Therefore going by the decision of the Apex Court in **Minu Rout and another v. Satya Pradyumna Mohapatra and others (2013 (10)SCC 695)**, the income of the driver can be reasonably fixed @ Rs.6,000/- per month. Therefore the compensation under the head of permanent disability as well as towards loss of earnings is liable to be recalculated reckoning the income as Rs.6,000/-. The appellant was 58 years old at the time of the accident. The appellant has produced the medical bills for a sum of Rs.146,317/- as per Ext.A11 series. The Tribunal even though verified

the bills passed an award for a sum of Rs.70,000/- alone on the ground that the claim of the appellant was only for Rs.70,000/-. It is seen that medical bills have been produced which come to Rs.1,46,317/-. Apart from the bills produced before the Tribunal, the appellant has produced Annexure I before this court which shows that his treatment continued and he incurred a sum of Rs.17,925/- as on 5.11.2010. From these documents, it can be seen that the treatment of the appellant has been continuing much after the discharge from the hospital and even after the expiry of more than two years from the date of the accident. We therefore find that the amount covered by the medical bills are liable to be granted. Therefore under the head of medical expenses, the appellant will be entitled to a sum of Rs.1,46,317/- covered by Ext.A11 series and a sum of Rs.17,925/- covered by Annexure II towards future medical expenses. It is evident from Annexure I produced before this Court that the implants were removed on 3.11.2010 from tibia and fibula and interfragmentary screw were removed, through separate incision, the square nail (L) removed, the unhealthy fibrous tissue removed and Screw holes curetted out. Towards bystander's expenses,

a sum of Rs.2800/- alone is granted @ Rs.100/- per day for 28 days. We enhance the same to Rs.5,600/- @ Rs.200/- per day for 28 days. Towards pain and suffering, the Tribunal has awarded only a sum of Rs.12,000/-. Having regard to the nature of the injuries sustained by the appellant and the prolonged treatment undergone by him, especially when he is a driver, we find it necessary to enhance the compensation under this head to Rs.35,000/-. Under the head of loss of earnings, the Tribunal has awarded Rs.3000/- for 1½ months reckoning his income as Rs.2,000/-. We enhance the same to Rs.9,000/- for a period of 1 ½ months @ Rs.6,000/- per month. Under the head of permanent disability, he will be entitled to Rs.64,800/- (6000 x 12 x 9 x 10%.)

6. Accordingly, the award is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport to hospital	500
Extra nourishment	500
Loss of earnings	9000
Treatment expenses	146317
Future treatment expenses	17925

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Pain and suffering	35000
Bystanders expenses	5600
Permanent disability	64800
Total	279642 (Rupees two lakhs seventy nine thousand six hundred forty two only)

7. The appellant is entitled to 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.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

