

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 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 1631 of 2013 ()

AGAINST THE AWARD IN OPMV 839/2009 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, PALA DATED 28-02-2013

APPELLANT/PETITIONER:

SALIM,
S/O.GOPALAN, GOKULAM HOUSE, 14TH WARD
S.L PURAM P.O, KANJIKKUZHY PANCHAYATH, CHERTHALA
NOW RESIDING AT EATTATHOTTU HOUSE, POOVARANY P.O
POOVARANY VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS/RESPONDENTS:

1. MANOJ, S/O.SIVADASAN
KARADAVELIYIL HOUSE, 9TH WARD
CHERTHALA SOUTH PANCHAYATH, MAYITHARA P.O
PIN 688 539.

2. THE NATIONAL INSURANCE CO.LTD
REP.BY ITS DIVISIONALMANAGER, KOTTAYAM PIN 686 001.

R2 BY ADV. SRI.P.G.GANAPPAN
R BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.1631 of 2013

Dated this the 6th day of February 2015

JUDGMENT

Ramachandran Nair, J.,

Claiming further compensation for the injuries sustained, the appellant has filed this appeal. As against the claim of Rs. 4 lakh the Tribunal has granted Rs.1.50,330/- only.

2. The accident occurred on 30.11.2008 at about 6 p.m while he was walking along the side of Mohamma-Kanjikuzhi public road and at that point of time, the offending vehicle, a motor cycle, bearing Registration No. KL-32/A-4882 driven by the first respondent hit him down and he sustained severe injuries. He was initially treated in KVM hospital, Cherthala and was removed to the Medical College Hospital, Kottayam for better treatment and was treated as inpatient till 12.12. 2000.

3. The appellant has sustained the following injuries:

1.Acute extra dural hemorrhage left temporal region.

2.Fracture zygomaticarch.

3.Fracture posterior lateral wall of left maxillary sinus.

4. Multiple abrasions on face.

5. Wound of size 4x1/2 cm over left eyebrow.

6. Acute hemorrhagic contusion left frontal region.

7. Speck of intracranial bone place (chip fracture of inner cortex) in right temporary region.

4. The disability sustained going by Ext.X1 issued by the Medical Board is assessed as 14% to the whole body.

5. Learned counsel for the appellant submitted that the appellant was a driver by profession and the monthly income claimed at Rs. 8,000/- ought to have been adopted. Learned counsel for the Insurance Company pointed out that even the driving licence has not been produced before the Tribunal. The accident occurred in the year 2008. Therefore, according to us, a reasonable amount at the rate of Rs. 4,500/- will be the correct one to be adopted as the monthly income. Thus the appellant will be entitled to Rs. 13500/- towards partial loss of earnings.

6. The next item is regarding disability and going by the disability certificate, the extend of disability certified is 14%. Even though the Tribunal has reduced it to 10%, no proper reasons have been pointed out to adopt a lesser percentage. Since the certificate is issued by a Medical Board, we accept the

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percentage of disability at 14%. Thus the disability compensation will be $\text{Rs.}4,500 \times 12 \times 16 \times 14 / 100 = \text{Rs.}1,20,960/-$.

7. The Tribunal has granted Rs. 20,000/- towards pain and suffering and Rs. 15,000/- towards loss of amenities. The same also according to the learned counsel for the appellant is inadequate. In the light of the injuries sustained as well as the treatment undertaken and the disability sustained, we enhance the same to Rs. 30,000/- and Rs. 25,000/- respectively.

8. After hearing the learned counsel on both sides we are of the view that the claimant will be entitled for enhancement of compensation awarded, under different items. Therefore, we recompute the compensation in the following manner:

Sl. No.	Heads	Amount awarded (in Rs)	Amount modified(in Rs)
1	Loss of earnings	12000	13500 (Rs.4500x3)
2	Transport to hospital	2000	2000
3	Extra nourishment	1000	1000
4	Damages to clothing	500	500
5	Treatment expenses	15630	15630
6	Bystander expenses	2600	3250 (Rs.250x13)
7	Pain and suffering	20000	30000
8	Disability	81600	1,20,960 (Rs.4500x12x16x14/100)
9	Loss of amenities	15000	25000
10	Total	150330	211840

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9. Thus the appellant will be entitled to a total compensation of Rs.2,11,840/-(Rupees Two lakh Eleven Thousand Eight hundred and forty only) which will carry interest at the rate of 9% p.a for the enhanced amount from the date of petition in the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513].

10. The Insurance Company is directed to deposit the entire 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 allowed accordingly. The parties will suffer their costs, in the appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge

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