

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

MACA.No. 663 of 2014 ()

AGAINST THE AWARD IN OPMV 1467/2003 of MACT, NORTH PARAVUR

APPELLANT/PETITIONER IN OP (MV) 1467/2003):

GEORGE
S/O LONAN, KONNULLY HOUSE, PERUVARAM
N. PARAVUR

BY ADVS.SRI.REJI GEORGE
SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY

RESPONDENT/RESPONDENT NO 3 IN OP(MV) 1467/2003:

NATIONAL INSURANCE CO.LTD.
BRANCH OFFICE, PALA 686 011

BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A.No.663 OF 2014

Dated this the 20th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant in O.P.(MV) No.1467/2003 is the appellant herein. As against the total claim of Rs.6 lakhs, the Tribunal has awarded Rs.1,88,215/-

2. The appellant is working as a U.D.Clerk in St.Albert's College, Ernakulam and was aged 44 at the time of the accident. The accident occurred on 8.8.2003 while he was travelling as a pillion rider in the motor cycle bearing Reg.No.KL 14/ B 8312. He was travelling along with the rider of the motor cycle, who is the petitioner in connected O.P.No.2/2004 along Paravur-Ernakulam road. When they reached at Varappuzha bridge, the offending vehicle which is a mini lorry bearing Reg.No.KL 5 N 7044 hit the motor cycle and both of them fell on the road and sustained injuries. The injuries sustained by the appellant are the following :

“fracture pelvis, bladder injury, type B open book type fracture, rupture bladder and urethral injury, multiple abrasions over both limbs, right shoulder right upper lip lacerated wound.”

3. The appellant was examined before the Tribunal and documentary evidence was adduced. Exts.A4 to A6 support the details of the injuries and Ext.A6 series are the discharge summaries. He was treated as an inpatient for a period of 54 days from 8.8.2003 to 5.9.2003, 22.9.2003 to 13.10.2003, 3.11.2003 to 5.11.2003 and 12.11.2003 to 15.11.2003. Ext.A7 is the disability certificate issued by the Medical Board by which it is certified that he is having 20% disability.

4. The learned counsel for the appellant submits that the compensation granted is inadequate and in spite of the permanent disability which has resulted in injuries to the bladder and has affected his quality of life, the same has not been properly compensated.

5. The Medical Board in the certificate has certified the disability in the following manner :

“ Because of bladder neck and posterior urethral injury, he is having incontinence of urine which is affecting his quality of life. According to Mc Brisc's scale his permanent whole body disability is assessed to be 20% (twenty) - surgical 20% (twenty) and Orthopedic - Nil”

6. The learned counsel explained that even though he has not lost his job and the earning capacity as such is not affected, discomforts in life are telling. The Medical Board's opinion itself is important according to the learned counsel.

7. The Tribunal below has accepted the disability of 20%. The compensation has been assessed by taking the retirement age at 55 and then by utilising the multiplier method from the age of retirement, compensation for permanent disability is assessed at Rs.38,400/-. The learned Senior Counsel for the Insurance Company submits that such a method is not the correct one going by the well settled principles. It is submitted that the multiplier will have to be adopted based on the age as on the date of accident. Herein the multiplier is 14 and even if the age of retirement is taken as 55, then the balance number of years will

be 3, whereas the Tribunal has reckoned 8 years for fixing the compensation.

8. The Tribunal has granted compensation under the following heads as per the table below :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	4000
Transport to hospital	3000
Medical expenses	102815
Pain and suffering	30000
Permanent disability	38400
Loss of amenities	10000
Total	188215

9. The partial loss of earnings claimed has been granted, but according to the learned counsel Rs.4000/- granted is too low. It is submitted that he was on half pay leave from 8.8.2003 to 14.10.2003 and from 22.12.2003 to 31.12.2003. Even if the whole period is not taken, he will be entitled to some more amount. We grant a further amount of Rs.10,000/- under the said head.

10. As far as bystander's expenses is concerned, nothing has

been granted by the Tribunal. The total period of treatment is 54 days and we grant @ Rs.200/- per day which will be Rs.10,800/-. For medical expenses, it is seen that the entire amount has been granted. We confirm the same.

11. As far as pain and suffering is concerned, we find that the appellant is entitled for enhancement. The injuries were of serious nature and he was in continuous treatment for 54 days and further, going by the details spoken to by him it has resulted in acute hardship to him. We grant Rs.50,000/- towards pain and suffering.

12. The permanent disability calculated by taking the date of retirement is not the correct the method, according to us. The learned counsel submits that for fixing the same, in the absence of loss of earning power, this Court may arrive at a notional amount and multiply it with the correct multiplier. The Tribunal has granted Rs.34,800/- for permanent disability already. Even though there is no loss of earning power, the aspect of permanent disability is looming large, which has to be compensated. Therefore we grant a total amount of Rs.75,000/- towards permanent disability, which will be reasonable.

13. The next item is an important aspect viz; towards loss of enjoyment of life and amenities of life as well as shortened expectation of life. We consider all these grounds together. The amount granted by the Tribunal is only ₹10,000/-. Probably the said amount was granted since amount was granted towards permanent disability. As far as loss of enjoyment of life and amenities of life are concerned, it is seen that the appellant will not be able to lead a normal life like others because of the adverse impact on his body of the disabilities. He will have to continue his life with the difficulties especially in the light of the report of the Medical Board that that it will affect the quality of the life. We therefore are of the view that for loss of amenities of life and loss of enjoyment of life, an amount of ₹1,50,000/- can be granted, which will be reasonable.

14. Accordingly, the total compensation will be as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	14000
Transport to hospital	3000
Bystander's expenses	10800
Medical expenses	102815

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Pain and suffering	50000
Permanent disability	75000
Loss of amenities of life and enjoyment of life and shortended expectation of life	150000
Total	405615 Rounded off to 4,05,600/- (Rupees four lakhs five thousand six hundred only)

15. The enhanced amount will carry interest @ 9% per annum from the date of petition. For the period of delay in filing the appeal namely 1247 days, the Insurance Company will not be liable to pay any interest. The Insurance Company shall deposit the amount less the amount already awarded within three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.