

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 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

MACA.No. 455 of 2009 ( )

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(AGAINST THE AWARD IN OPMV 1124/2003 of ADDL.M.A.C.T., KOTTAYAM DATED 15-05-2008)

APPELLANT IN MACA/PETITIONER IN OP(MV) ::

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TOJO SEBASTIAN, AGED 39 YEARS,  
S/O.LATE SEBASTIAN, PALAKUNNEL HOUSE, MAMMOOD P.O.  
CHANGANASSERY, KOTTAYAM DISTRICT.  
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER, SEBASTIAN JAMES,  
PALAKKUNNEL HOUSE, MAMMOOD P.O., CHANGANASSERY.)

BY ADV. SRI.A.P.SUBHASH

RESPONDENT(S) IN MACA/RESPONDENTS IN OP(MV) ::

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1. RAJU JOSEPH, PALLIVATHUKKAL HOUSE,  
NALUNNACKAL P.O., VAKATHANAM.

2. JOSE.J.PALAKKUNNEL, PALAKUNNEL,  
MAMMOOD P.O., CHANGANASSERY.

3. THE BRANCH MANAGER, NEW INDIA  
ASSURANCE COMPANY LTD., CHANGANASSERY.

R,R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

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

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**MACA. No. 455 OF 2009**  
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Dated this the 24<sup>th</sup> day of February, 2015

**JUDGMENT**

**Ramachandran Nair,J.**

The appellant, who was injured in an accident, is aggrieved by the lesser amount of compensation awarded by the Tribunal. Against his claim for Rs.30,00,000/-, the learned Tribunal awarded an amount of Rs.4,50,300/- with 7% interest from the date of petition.

2. The accident occurred on 3/1/2003 when the appellant was traveling as a pillion rider on a motor cycle bearing Registration No. KL-5/K-2884 through Changanacherry-Vazhoor road. When the motor cycle reached near Vallyakulam junction, a bus bearing registration No. KL-5/A-4134 coming from the opposite direction hit against the motor cycle, in which the appellant was traveling, and he fell down and sustained severe injuries. The Tribunal found

negligence on the part of the driver of the bus.

3. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company.

4. It is submitted by the learned counsel for the appellant that the appellant was working abroad at the time of the accident and had returned back during annual leave and was expected to go back on 11/1/2003. Even though the appellant produced certain documents to prove that his salary is more than Rs.40,000/- when converted to Indian currency, the Tribunal has reckoned his monthly income as Rs.8,000/-only. It is submitted that the appellant had prolonged treatment extending to ten months and he had undergone different surgeries. But, only Rs.30,000/- has been granted by the Tribunal towards pain and sufferings.

5. Next item on which enhancement sought for is regarding the bystander's expenses, which have been granted only for a period of three months at the rate of Rs. 1,500/- per month. It is also submitted that disability assessed by the Tribunal, in spite of production of Ext.X1 disability certificate from the Medical

Board, is 8%. According to the appellant, it is not justifiable. It is also submitted that compensation for loss of amenities and loss of enjoyment has not been granted.

6. Immediately after the accident the appellant was taken to St.Thomas Hospital, Chethipuzha and from there he was transferred to Medical College, Hospital, Kottayam and later he was taken to Matha Hospital, Thellakom. He was aged thirty four and half years at the time of the accident. The period of treatment shows that he was treated as inpatient from 3/1/2003 to 17/1/2003 as evidenced from Ext.A10 discharge certificate issued by the Matha Hospital. He had sustained fracture facial bones, frontal bone-Leforte 11 (Rt) and fracture crown ( Rt) Zygomaxillary complex ( Rt). Nasomaxillary (Lt.) Hemosinus (bilateral) and head injury, Fracture tibia (Rt), fracture patella right, lacerated wound right forearm, compound coronail (Type 1) fracture (Rt) elbow. During this period he was treated in Neuro ICU and general surgery consultation was done. Other treatment procedures conducted are the following:- The wounds debrided temporarily and waited for head injury to clear. He was then

taken up for surgery. Zygomaxillary complex elevated and fixed with plates and nasomaxillary complex reduced. Hemosinus drained and arch bar fixation done. Sutures removed; pack removed & healing well Fracture crown build up with composite resin restoration. He was treated with wound debridement IC fracture fixation with 6.5 mm cancellous screws/C-ARM & long leg cast and wound debridement of suturing of L.W. elbow. Elastic crape bandage and e/o sling ( Rt) elbow and he was discharged on 17/1/2003.

7. Second part of the in patient treatment had started from 10/4/2003 to 14/4/2003 and the 3<sup>rd</sup> part started from 21/10/2003 to 22/10/2003. These are all supported by Exts. A11, A12 and A13 certificates. Exts.A11,A12 and A13 show that the appellant was subjected to surgeries and implants were also put and he was on crutches for a long time.

8. First of all we will come to the question whether the fixation of monthly income is justified. In this context, the learned counsel relied upon Exts.A16,A17 and A18. Ext.A16 is an employment contract between the appellant and the

National Company for Mechanical & Electrical Works Ltd. abroad. Duration of the contract is shown as unlimited. Ext.A17 is the translated version of work permit issued by the Under Secretary, Ministry of Labour & Social Affairs to the National Mechanical Works Company, Kuwait permitting the National Mechanical Works Company, to carry out the public works. Ext.A17 shows that the period of employment is two years and the salary of the appellant is 300 Kuwait Dinars. Ext.A18 series of pay slips, which support the payment of monthly salary to the appellant.

9. After referring to the various documents, the Tribunal reckoned the monthly income of the appellant as Rs.8000/- in Indian currency. We find from the evidence that Ext.A22 is an I.D. Card issued to the appellant from the Kuwait Oil Company and Ext.A27 is the certificate issued by ASME International to show that he had participated in three day course on "Pressure Vessels & Piping Technology organised by the American Society of Mechanical Engineers (ASME International) West India during April 13,14 and 15 of 201 at Bombay. Ext.A26 shows his

qualification. Going by the same, it can be seen that the appellant is a diploma holder in Mechanical Engineering. Ext.A24 copy of Pass-Port proves that the appellant was abroad during this period and earlier.

10. The learned Counsel for the Insurance Company submitted that the evidence adduced by the appellant does not conclusively prove that he was in a Gulf Country at the same point of time when the accident occurred. But, we are of the view that the evidence adduced by the appellant shows that he was under an employment contract during the relevant period. It is evident that he had come back for a short duration. Ext.A-20 dated 27/9/2005, would show that he resigned his job because of the difficulties to continue the employment as a result of the disability sustained.

11. The next aspect is regarding the monthly remuneration. The salary of the appellant at that time was 147.83 K.D, which on conversion will come to Rs. 44,000/-. But, as far as the related conditions of service i.e. as to whether he was being given any rent free accommodation or paid one and other

expenses, the details are not available from the evidence. The learned counsel for the appellant, actually wanted this Court to adopt Rs. 44,000/- as the income for calculating disability compensation. In the light of the discussion made above, we will not be justified in adopting the entire amount. The Tribunal reckoned Rs.8,000/- as the monthly income of the appellant. We are of the view that, at any rate, Rs. 20,000/- can be reckoned as monthly income of the appellant for the purpose of calculating the disability compensation. Accordingly, we adopt Rs.20,000/- as the monthly income of the appellant.

12. Next aspect to be considered is regarding the disability sustained by the appellant and the certificates produced to prove the same. Ext.X1 is the certificate issued by the Medical Board. Ext.X1 shows that the appellant had sustained 26% disability which includes deformity of for right knee.

13. The petitioner also produced Exts.A1 to A3 to support the case of disability. The same have been proved through PWs1 to 3, the doctors. In Ext.A1, which is issued by the Medical College Hospital, the Doctor has stated that the appellant has got

difficulty in squatting, Genu varum deformity of right knee, Tenderness (R) elbow over the wound scar, Shortening of 2 cms (R) leg, restriction of movements - ( R) knee-Terminal 30 flexion restricted, (R) elbow terminal 10 flexion restricted and permanent disability is shown at 100%. The doctor was examined as PW1. Ext.A2 issued by the Oral & Maxillo Facial Surgeon, Matha Hospital and Trauma Care Centre, Thellakom, Kottayam, shows that the appellant has got permanent disability of 12 % which is due to facial injuries and to the tooth. The doctor was examined as PW2. Ext.A3 is the certificate issued by the Professor & HOD of Neuro Surgery, Medical College Hospital, Alappuzha, wherein it is stated that the appellant complained about occasional head ache and dizziness. Sensory blunting left forehead Burrhole present left forehead. The disability shown is 8%. The doctor was examined as PW3 . Ext.A3 also supports the case of the appellant for the purpose of fixing the percentage of disability as 26 %. Paragraphs 13 & 14 of the award show all these details.

14. Towards pain and sufferings Rs. 30,000/- was granted

by the Tribunal. In the light of the procedures undertaken for treatment and the continuous treatment for a period of ten months, we award **Rs.65,000/-** towards pain and sufferings. As far as bystander's expenses are concerned, the claim for 10 months is reasonable. Accordingly, we grant **Rs. 15,000/-** under the said item of expenses. The loss of earnings claimed by the appellant is for a period of ten months. We will be justified in granting the compensation for loss of earnings in the light of the period of treatment undergone by the appellant. Accordingly, we award **Rs.200,000/-** towards partial loss of earnings. Lastly, the claim is for disfiguration including shortening of his right leg, which will cause inconvenience and loss of amenities throughout his life, for which compensation needs to be granted. He was aged thirty and half years at the time of the accident. It is clear that he will not be able to indulge in any of the normal activities as before. Therefore, we award **Rs. 75,000/-** towards loss of amenities and enjoyment in life. Hence, we recompute the amount of compensation in the following manner:

| <i>Sl No.</i> | <i>Head of the claim</i> | <i>Amount awarded by the Tribunal ( in Rupees)</i> | <i>Amount awarded by this Court ( in rupees)</i> |
|---------------|--------------------------|----------------------------------------------------|--------------------------------------------------|
| 1             | Loss of earnings         | 32,000/-                                           | 2,00,000/-                                       |
| 2             | Pain & Sufferings        | 30,000/-                                           | 65,000/-                                         |
| 3             | Damage to clothing       | 500/-                                              | 500/-                                            |
| 4             | Transportation charges   | 3000/-                                             | 3000/-                                           |
| 5             | Medical Expenses         | 1,23,900/-                                         | 1,23,900/-                                       |
| 6             | Bystander's expenses     | 4,500/-                                            | 15,000/-                                         |
| 7             | Extra Nourishment        | 1000/-                                             | 1000/-                                           |
| 8             | Loss of earning capacity | 2,30,400/-                                         | 9,98,400(20,000 x12x16x26/100)                   |
| 9             | Loss of amenities        | 25,000/-                                           | 75,000/-                                         |
|               | Total                    |                                                    | 14,81,800/-                                      |

Thus, the appellant will be entitled to a total compensation of Rs.14,81,800/-. (Rupees Fourteen Lakhs Eighty One Thousand Eight Hundred only) The enhanced amount of compensation will carry interest at the rate of 9% p.a. from the date of the petition.

15. The Insurance Company is directed to deposit the compensation amount along with the interest at the rate of 9% for enhanced amount within a period of three months. It is submitted by the learned counsel for the appellant that the appellant had paid the court fee of Rs.11,373/- before the Tribunal, but there is a direction by the Tribunal to the

respondent Insurance Company to produce a cheque for Rs. 11,373/- towards the court fee. The said direction is hereby deleted. But, the appellant will be liable to pay the court fee for the amount awarded by this Court. Therefore, the balance court fee will be collected from the amount to be deposited before the Tribunal by the Insurance Company, before the disbursement of the compensation amount to the appellant.

The appeal is accordingly allowed. Parties will suffer their respective costs in the appeal.

**Sd/-**  
**T.R.RAMACHANDRAN NAIR,**  
**Judge.**

**Sd/-**

**P.V.ASHA,**  
**Judge.**

Dpk

/True copy/ PS to Judge.

