

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

MACA.No. 1947 of 2007 ()

OPMV 2684/2001 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR

APPELLANT/PETITIONER :

**KALIYAN, S/O.RATHNAM,
KATTUMANNAR KOIL, KADALLOOR DIST., TAMIL NADU.**

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS :

- 1. BABU, S/O. VIJAYATHILAKAN,
PARATHATTIL HOUSE, VELLUMAMPADI, CHAZOOR P.O.**
- 2. NOUSHAD, S/O.ABDUL RAHIMAN,
PUTHIYAVEETIL HOUSE, VALAPPAD, TRICHUR.**
- 3. THE NEW INDIA ASSURANCE CO.LTD.,
PERINCHERY BUILDING, ROUND NORTH, THRISSUR.**

R3 BY ADV. SMT.A.SREEKALA

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

M.A.C.A.No.1947 of 2007

Dated this the 29th day of May, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(M.V)No.2684 of 2001 on the file of the Motor Accidents Claims Tribunal, Thrissur. He instituted O.P.(M.V)No.2684 of 2001 on 1.11.2001 claiming compensation for the injuries sustained by him in a motor accident that took place at about 2.30 p.m. on 3.9.2001. He had in the claim petition stated that at about 2.30 p.m. on 3.9.2001, while he was walking along the public road at Mathilakam in Thrissur District, a motor car bearing Registration No.KL-8/K-4466 driven by the first respondent and owned by the second respondent hit him and in that accident he sustained severe injuries. Immediately after the accident, he was taken to Medicare Hospital, Kodungallur and from there, to Lissie Hospital, Ernakulam, where he underwent treatment as an inpatient for a total period of 143 days on different occasions. It is also stated that he had undergone three surgeries during the said period. It is contended that the accident took place solely on account of the rash and negligent driving of the motor car by the first respondent. The appellant had in the claim petition contended that he was a coolie earning Rs.3,500/-

per month. Though notice was served on respondents 1 and 2 viz., owner and driver of the motor car, they did not enter appearance, with the result, they were set ex-parte. The third respondent, the insurer of the motor car entered appearance and filed a written statement admitting the existence of a valid policy of insurance. It however denied and disputed the case set out by the appellant that the accident took place as a result of the rash and negligent driving of the motor car by the first respondent. It also disputed the age, the occupation, the income of the appellant, the nature of the injuries sustained by him, the treatment undergone, the expenses incurred for the treatment and contended that the amount claimed as compensation under various heads is exorbitant.

2. Before the Motor Accidents Claims Tribunal, the claimant examined himself as PW1 and the Doctor who issued Ext.A12 disability certificate, as PW2. The claimant also produced and marked Exts.A1 to A12. On the side of the respondents, no oral or documentary evidence was adduced. The Motor Accidents Claims Tribunal considered the rival contentions and held, relying on Ext.A1 F.I.R. and Ext.A5 charge sheet that the accident took place on account of the rash and negligent driving of the motor car by the first respondent. The tribunal thereafter proceeded to award compensation under various heads. Though the appellant had claimed that he was working

as a coolie, earning a monthly income of Rs.3,500/-, on the short ground that there is no acceptable evidence to prove the monthly income, the tribunal notionally fixed his monthly income at Rs.2000/-. Though the tribunal had taken note of the fact that the claimant who was examined as PW1 was not in a position to stand without the assistance of two persons and PW2 has in Ext.A12 disability certificate assessed the percentage of disability as 40%, the tribunal awarded compensation for permanent disability taking the monthly income of the claimant as Rs.2,000/- and the percentage of disability as 29%. Applying the multiplier 15, the tribunal awarded the sum of Rs.1,04,400/- as compensation for permanent disability. The tribunal also awarded Rs.10,000/- as compensation for loss of earnings for a period of five months taking his monthly income as Rs.2,000/-. In addition, the tribunal awarded the sum of Rs.6,900/- towards expenses for transportation, Rs.500/- for damage to clothing, Rs.5,000/- towards expenses for extra-nourishment, Rs.35,500/- towards expenses for treatment, Rs.10,000/- towards bystander's expenses, Rs.40,000/- towards compensation for pain and suffering, Rs.15,000/- for loss of amenities and Rs.10,000/- towards expenses for future treatment, in all aggregating to Rs.2,37,300/-. The Motor Accidents Claims Tribunal also held the insurer liable to pay the said amount together with interest at the rate of 7% per annum from the

date of petition (1.11.2001) till the date of actual payment with proportionate costs. The claimant has, dissatisfied with the quantum of compensation awarded by the tribunal, filed this appeal.

3. We heard Sri.Sheji P.Abraham, learned counsel appearing for the appellant and Smt.A.Sreekala, learned counsel appearing for the third respondent. Notice to respondents 1 and 2 was dispensed with for the reason that the third respondent insurer does not dispute its liability to pay compensation and has not pleaded or proved breach of the policy conditions. Sri.Sheji P.Abraham, learned counsel appearing for the appellant contended that the appellant/claimant had in the claim petition stated that he was earning a monthly income of Rs.3,500/-, that he had also deposed to the said fact when he was examined as PW1, that the said evidence has not in any way been proved to be incorrect and therefore, the tribunal erred in holding that there is no acceptable evidence to prove the monthly income of the appellant. Relying on the decisions of the Apex Court in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited** [AIR 2011 SC 2951] and **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited** [(2014) 2 SCC 735], learned counsel appearing for the appellant contended that as the claimant was working as a coolie, the tribunal cannot expect him to produce documentary evidence to

substantiate his claim, that the Apex Court has in the aforesaid decisions held that at the relevant time, viz., 2004, the wages of a labourer in the State of Karnataka was Rs.100 to Rs.150/- per day or Rs.4,500/- per month and had accordingly accepted the statement of the claimant therein that his monthly income was Rs.4,500/-, that the claimant in the instant case was employed in the State of Kerala where the wages of labourers are on the higher side and therefore, there is no reason why the monthly income of the appellant at the time of the accident should not be treated as Rs.3,500/- as contended by him. Learned counsel appearing for the appellant contended that even in the case of a non-earning person, the monthly income is treated as Rs.3,000/- and for that reason also, the impugned award, to the extent it treats the monthly income of the appellant claimant as Rs.2,000/-, is liable to be suitably modified. Referring to the multiplier adopted by the Motor Accidents Claims Tribunal, learned counsel appearing for the appellant very fairly conceded that in view of the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** [(2009) 6 SCC 121] as the claimant was aged 47 years at the time of the accident, the multiplier to be adopted is 14 and not 15.

4. Inviting our attention to the decisions of the Apex Court in **Ramachandrappa v. The Manager, Royal Sundaram Aliance**

Insurance Company Limited (supra), **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited** (supra), **Basappa, S/o.Sanganabasappa Bahvikatti v. T.Ramesh, S/o.Tangavelu and Another** [(2014) 10 SCC 789], learned counsel for the appellant contended that the appellant who was a coolie by profession and was able bodied has become permanently disabled as a result of the accident, that the fact that he requires the assistance of two persons even to stand up has been taken note of by the tribunal and therefore it is clear that he has become incapable of doing his work as a coolie. Learned counsel appearing for the appellant submitted that though PW2 has in Ext.A12 disability certificate assessed the permanent disability of the appellant as 47%, as he is no longer capable of performing all the works which he was capable of performing as a coolie at the time of accident which resulted in the disablement, the percentage of disability has to be treated as 100% as held by the Apex Court in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited** (supra), **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited** (supra) and **Basappa, S/o. Sanganabasappa Bahvikatti v. T.Ramesh, S/o. Tangavelu and Another** (supra). Inviting our attention to the principles laid down by the Apex Court in the aforesaid decisions, learned counsel contended that as the

appellant cannot any longer continue to work as a coolie or do any other work as he is not in a position to stand up on his own, he has become permanently disabled and has lost his earning capacity permanently. Learned counsel contended that in such circumstances the appellant is entitled to compensation for permanent total disability taking the percentage of disability as 100%. Learned counsel also submitted that the appellant had undergone treatment as an inpatient at Lissie Hospital, Ernakulam for a total period of 143 days during different spells of time, that he had also met the expenses of a bystander and that even on a modest estimate he is entitled to be paid the sum of Rs.21,450/- to meet the expenses of a bystander, taking the expenses as Rs.150/- per day. Learned counsel contended that the expenses of a bystander is not confined to expenses incurred for refreshments but also the expenses for travel of the bystander and therefore, the award of the sum of Rs.10,000/- as compensation to meet the expenses of a bystander for 143 days is meagre and inadequate. Learned counsel submitted that as against the claim of Rs.50,000/-, the Motor Accidents Claims Tribunal has awarded only the sum of Rs.40,000/- as compensation for pain and suffering and having regard to the nature of the injuries sustained by the petitioner and the period of hospitalisation as also the fact that he had undergone three surgeries, the tribunal ought to have awarded the

sum of Rs.50,000/- as compensation for pain and suffering. As regards compensation for loss of earnings, learned counsel submitted that the compensation awarded by the Motor Accidents Claims Tribunal on the basis that the monthly income of the claimant is Rs.2,000/- also requires to be suitably modified taking the monthly income as Rs.3,500/-.

5. Per contra, Smt.A.Sreekala, learned counsel appearing for the third respondent contended that apart from the *ipse dixit* of the appellant, there was no material before the tribunal to show that he was earning a regular income of Rs.3,500/- per mensem and therefore, the compensation awarded by the Motor Accidents Claims Tribunal under the head loss of earnings and the multiplicand adopted by the tribunal for awarding compensation under the head permanent disability do not merit interference. As regards the contention of the appellant that he has suffered 100% permanent disability, learned counsel contended that the appellant has become disabled to work only as a coolie, that he can engage in another avocation and therefore, the appellant cannot be heard to contend that he has become permanently disabled to earn his livelihood. Learned counsel submitted that the compensation awarded by the Motor Accidents Claims Tribunal under various heads is just and fair compensation and that on the evidence on record, the claim for enhancement is not

tenable.

6. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The fact that the appellant was a coolie aged 47 years is not in dispute. He had in the claim petition averred and when examined as PW1 has deposed to the fact that as a coolie he was earning a monthly income of Rs.3,500/-. The Motor Accidents Claims Tribunal has in the impugned award held that there is no evidence to prove that the appellant/claimant was earning a monthly income of Rs.3,500/- and in the absence of such evidence, the monthly income has to be notionally fixed as Rs.2,000/-. We are of the opinion that the said finding entered by the Motor Accidents Claims Tribunal cannot be sustained. The Apex Court has in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited** (supra) held that the claimant who is working as a coolie cannot be expected to produce documentary evidence to substantiate his claim and that during the relevant period namely in the year 2004 the wage of a labourer was between Rs.100 to Rs.150 per day or Rs.4,500/- per month. Ramachandrappa, the claimant in that case, was a coolie working in the State of Karnataka. The appellant is a coolie working in the State of Kerala. It is common knowledge that wages of labourers and persons working as coolies are

on the higher side in the State of Kerala. Such being the situation, the claim made by the appellant that as a coolie he was earning an income of Rs.3,500/- per month cannot be said to be exorbitant or imaginary. The claim is in our opinion a honest and bonafide claim and should have been accepted as such. The amount claimed is also not exorbitant or excessive. It is also relevant in this context to note that even in the case of a non-earning person the monthly income is notionally taken as Rs.3,000/-. Therefore for that reason also, we are of the opinion that the Motor Accidents Claims Tribunal ought to have taken the monthly income of the appellant/claimant as Rs.3,500/-. Computed on that basis, we are of the opinion that the amount of compensation awarded to the appellant/claimant towards loss of earnings for a period of five months is liable to be enhanced to $\text{Rs.3,500} \times 5 = \text{Rs.17,500/-}$. The tribunal has awarded only Rs.10,000/- under that head. We accordingly hold that the appellant/claimant is entitled to an additional compensation of Rs.7,500/- towards loss of earnings for a period of five months over and above the compensation awarded by the Motor Accidents Claims Tribunal. The tribunal has, as stated earlier, awarded only the sum of Rs.10,000/- as compensation to meet the expenses of a bystander. The appellant had undergone treatment as an inpatient for a period of 143 days. Having regard to the fact that the accident took place in

the year 2001 and the expenses of a bystander would include expenses for food and refreshments and expenses for travel, we are of the opinion that on a modest estimate, the appellant is entitled to be paid the sum of $\text{Rs.}150 \times 143 = \text{Rs.}21,450/-$ as compensation under that head. We accordingly award to the appellant/claimant an additional compensation of $\text{Rs.}11,450/-$ under that head.

7. It is not in dispute that the appellant was involved in an accident, that he had suffered extensive injuries, that he had undergone prolonged treatment and that his percentage of disability was assessed by PW2 at 40%. The fact that he had undergone three surgeries is also not in dispute. The tribunal has in the impugned award noticed that at the time of examination as PW1 the appellant/claimant was not in a position to stand up and that he required the assistance of two persons. PW2, the doctor who has issued Ext.A12 disability certificate has stated that as on 9.6.2003 the appellant had 50% loss of movement due to pain on account of the injuries caused to the right hip. He had also certified that the appellant has inability to move the limb at hip as well as the knee and that there was a shortening of his right leg. He had also certified that knee movement of the appellant is grossly restricted due to stiffness of the knee. PW2 has in Ext.A12 certified that in the light of the clinical findings, the appellant's permanent disability is estimated to be 40%. In

Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited (supra) the Apex Court considered a similar issue involving a coolie and held that on account of the injury sustained by the claimant he cannot work as a coolie and therefore, it can be safely concluded that he has become permanently disabled and has lost his future earning capacity. Taking note of that fact and the fact that he had undergone prolonged medical treatment and hospitalisation, the Apex Court awarded an additional amount of Rs.2,00,000/- as compensation to the appellant. In **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited** [supra] the Apex Court held that the claimant therein who was a vegetable vendor and whose right leg was amputated following the accident, is entitled to compensation on the basis that the degree of disability is 85%. In **Basappa, S/o. Sanganabasappa Bahvikatti v. T.Ramesh, S/o. Tangavelu and Another** (supra) the Apex Court held that the functional disability of a worker who was working at a construction site and has become unable to walk and stand for a long time is to be taken as 85%. The Apex Court has in **Rajkumar v. Ajay Kumar** (2011 (1) SCC 343) held that the same permanent disability may result in different percentages of loss of earning capacity in different persons depending upon the nature of the profession, occupation or job, age, education and other factors. It was held that

the total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident and that where a person suffers a permanent disability as a result of the injuries, the assessment of compensation under the head loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. In cases arising under the Workmen's Compensation Act if an injured workman becomes incapable of performing the work which he was capable of performing at the time of accident, he is entitled to compensation for total disability. It was also held that the Doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability and that the loss of earning capacity is something that will have to be assessed by the tribunal with reference to the evidence in its entirety.

8. In the instant case, it is not in dispute that immediately before the accident the appellant was an able-bodied coolie. As a result of the accident he has become incapable of working as a coolie. The finding of the tribunal is to the effect that without the assistance of two persons he cannot even stand up. Such being the situation, we are of the considered opinion that the appellant has become permanently disabled to work as a coolie. Consequently we hold that

the appellant is entitled to be awarded the sum of Rs.3,500 x 12 x 14 = Rs.5,88,000/- (Rupees Five Lakh Eighty Eight Thousand only) as compensation for permanent disability. In **Santhosh Devi v. National Insurance Co. Ltd.** [(2012) 6 SCC 421] the Apex Court held that in **Sarla Verma v. Delhi Transport Corporation** [supra] the Apex Court did not intend to lay down the absolute principle that there will be no addition to the income of a person who is self employed or who is paid fixed wages. It was held that it should be reasonable to say that a person who is self employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he or she becomes the victim of the accident then the same principle has to be applied for calculating the amount of compensation. In **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)] the Apex Court held after referring to the decision in **Santhosh Devi v. National Insurance Co. Ltd.** [supra] that increase in the total income in the case of self employed and persons of fixed wages is not 30% always, that if the deceased victim was below 40 years there must be an addition of 50% to the actual income of the deceased while computing future prospects, that the actual income should be income after paying tax and that the addition should be 30% in case the deceased was in the age group of 40 to 50 years. The Apex Court also held that where the victim is in the age group of 50 to 60 years,

the addition should be only 15% and that normally there should be no addition thereafter. Though initially, addition to the income to provide for future prospects was applied only for computing loss of dependency, in **Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited** [supra] the said principle was applied for calculating the compensation payable under the head loss of earning capacity/compensation for permanent disability. Computed in the light of the principles laid down in the aforesaid decision the compensation payable to the appellant as determined above will have to be enhanced by 30% for the reason that he was aged below 47 years. Consequently, we award to the appellant/claimant a further sum of Rs.1,76,400/- towards future prospects. The appellant/claimant will thus be entitled to an aggregate sum of Rs.7,64,400/- (Rs.1,76,400 + Rs.5,88,000) as compensation for permanent disability. The Motor Accidents Claims Tribunal has by the impugned award, awarded only a sum of Rs.1,04,400/- as compensation for permanent disability. The appellant claimant will therefore be entitled to a further sum of Rs.6,60,000/- as compensation for permanent disability over and above the compensation awarded by the tribunal.

We accordingly award to the appellant/claimant an additional compensation of Rs.6,60,000 + Rs.7,500 + Rs.11,500=Rs.6,79,000/-

over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the aforesaid amount together with interest @ 9% per annum from the date of petition till the date of actual payment within two months from the date of receipt of a certified copy of this judgment. Upon such deposit being made, one-half of the amount deposited shall be released to the appellant and the balance amount shall be transferred to a fixed deposit in a nationalised bank in the name of the appellant for a period of two years and shall be released to him only after the maturity period together with the accrued interest.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**

/true copy/

P.A. To Judge

al/vpv