

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&**

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

MACA.No. 537 of 2009

**AGAINST THE AWARD IN OPMV 1457/2000 OF II ADDITIONAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL, KOZHIKODE DATED 20-09-2008**

APPELLANT/PETITIONER IN OP(MV):

**SAMEER BABU, AGED 24 YEARS,
THAKKUKULAM VEEDU, AMAYOOR.P.O, MALAPPURAM.**

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS IN OP(MV):

- 1. AHAMMED USMAN PARI,
S/O. UMMER PARY, AGED NOT KNOWN, RESIDING AT MURAD MANZIL
HAJIYARPALLI.P.O
MALAPPURAM (OWNER OF THE CAR NO. KL-10/E 8485)**
- 2. V.V. SHEREEF, S/O. HASSAN,
AGED 32 YEARS, RESIDING AT VELOORYALAPPA HOUSE
KADALUNDI.P.O, KOZHIKODE
(DRIVER OF THE CAR NO. KL-10/E 8485)**

**[RESPONDENT NO.2 IS DELETED FROM PARTY ARRAY AT THE RISK OF
APPELLANT AS PER ORDER DATED 13.3.2015 IN I.A.NO.974/2015 IN MACA
537/2009]**

- 3. ORIENTAL INSURANCE COMPANY LIMITED,
BRANCH OFFICE, JASEELA COMPLEX, NILAMBUR ROAD
MANJERI, MALAPPURAM (INSURER OF THE CAR NO.KL10/E
8485)**

R3 BY ADV. SRI.P.V.JYOTHI PRASAD

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.537 of 2009

Dated this the 22nd day of May, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant who was a 15 year old boy at the time of accident has come up before this court seeking enhancement of compensation. As against the total claim of Rs.2 lakhs the Tribunal has awarded an amount of Rs.77,421/-.

2. Heard both sides.

3. A narration of the facts will be necessary to assess the physical disability of the appellant. The accident occurred on 11.02.2000 at 9.15 a.m. He was riding a bicycle from Amayoor to Karakkunnu school and the accident spot is near Anakottupuram road. The offending vehicle, a car bearing registration No.KL-10/E-8485 hit the appellant and he was thrown away on the road and sustained serious injuries. He was taken to the Medical College Hospital, Calicut for treatment.

4. The medical reports have been produced in evidence and Ext.A3 is the certificate issued from the Department of Physical Medicine and Rehabilitation, Medical College, Calicut. The said certificate would show that he was treated as inpatient in the Medical College Hospital from 11.02.2000 to 26.04.2000 as I.P.No.7839. When he was admitted in the surgery ward he had traumatic brain injury and left hemiplegia, fracture mandible and fracture neck of left radius. Then he was transferred to the Physical Medicine Department for rehabilitation. He was readmitted on 23.09.2000 and was discharged on 17.10.2000.

5. Ext.A4 is the O.P. Ticket and Ext.A5 is the Treatment Book. Ext.A5 shows that he was admitted on 11.02.2000 and discharged on 26.04.2000. It is stated that he continued his treatment up to 25.09.2006. Ext.A6 and Ext.A7 are two C.T.scan reports. The evidence will therefore prove that he was treated continuously for a long period. Ext.X1 is the case sheet and Ext.X2 is the disability

certificate. We have gone through the disability certificate, wherein it is recorded that he is having minimal spasticity and weakness of (L) upper and lower limb following traumatic brain injury. The percentage of permanent disability is noted as 15. Going by the evidence he was a student in 10th standard. The Tribunal has granted compensation under different heads as shown below:

Head of claim	Awarded in rupees
Transport to hospital	2000
Extra nourishment	1000
Damage to clothing and article	1000
Medical expenses	9671
Bystander expenses	10000
Pain and suffering	15000
Compensation for permanent disability	33750
Compensation for loss of amenities in life	5000
Total	77421

6. The learned counsel for the appellant vehemently prayed for enhancement of compensation.

7. For the purpose of assessing the percentage of permanent disability the Tribunal has taken the annual

income as Rs.15,000/- being a student. The accident occurred in the year 2000. We are of the view that the amount fixed for assessing the compensation is too low and it is justifiable in taking the monthly income at least at the rate of Rs.3,000/-. The multiplier going by the table provided in the decision of the Apex court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** will be 15. The compensation towards permanent disability therefore will be Rs.81,000/-. We also are of the view that towards the bystander's expenses what is granted by the Tribunal is at the rate of Rs.100/- per day which we enhance to Rs.150/- per day for 100 days and the same will be Rs.15,000/-. For pain and suffering what is granted by the Tribunal is Rs.15,000/-. He had suffered serious injuries and had been under continuous treatment for a period of 98 days. The appellant being a minor would have suffered much pain and difficulties due to the injury sustained and the treatment undertaken. Therefore, we enhance the same to Rs.35,000/-.

8. For loss of amenities in life what is granted by the Tribunal is Rs.5,000/- only. There is permanent disability of 15% going by the disability certificate. The major injury sustained by him is brain injury also. The weakness of lower and upper limb have been recorded by the medical board. Therefore, it will affect his normal activities and his capacity to lead a normal life, to an extent. Therefore, we enhance the amount towards loss of amenities and loss of enjoyment in life to Rs.50,000/-. The total compensation therefore will be Rs.1,94,671/-, which we rounded off to Rs.1,94,670/-. The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation.

9. Accordingly, we refix the compensation as shown below:

Head of claim	Awarded in rupees
Transport to hospital	2000
Extra nourishment	1000
Damage to clothing and article	1000
Medical expenses	9671

Head of claim	Awarded in rupees
Bystander expenses	15000
Pain and suffering	35000
Compensation for permanent disability	81000
Compensation for loss of amenities in life	50000
Total	194671 (Rounded off to Rs.1,94,670/-) (Rupees one lakh ninety four thousand six hundred and seventy only)

10. There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/