

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 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

MACA.No. 829 of 2014 ()

AGAINST THE AWARD IN OPMV 1066/2009 of MACT, PALA DATED 30-07-2013

APPELLANT/PETITIONER:

ABIN K.VINCENT, AGED 29 YEARS
S/O.VINCENT, KANYAKONIL HOUSE, AMALAGIRI BHAGOM
PERUVANTHANAM KARA
NOW RESIDING AT KOCHUPARAMBIL HOUSE, POOVARANY P.O.
MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT(S) /3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.,
REP. BY ITS DIVISIONAL MANAGER, KOTTAYAM.

R. BY ADV. SMT.A.SREEKALA
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.829 of 2014-E

Dated this the 27th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

Even though the learned counsel for the appellant vehemently argued for enhancement of the amount of compensation based on the disability sustained by the appellant, since evidence is lacking in the form of any disability certificate, this Court will not be justified in granting enhancement on the said account. It is a case of personal injury and the accident occurred on 17.08.2009 while the appellant was riding his motorcycle from Cylone Kavala to Kottayam and the offending vehicle an autorickshaw bearing Reg.No.KL-36/A-2937 hit the same.

2. The period of treatment is from 17.08.2009 to 21.08.2009. He had sustained lacerated wound 2X1 cm dorsum of the left wrist, pain and swelling over the left forearm and wrist. X-ray showed comminuted fracture of left radius and lower ulna with distal radioulnar joint dislocation.

3. The Tribunal has granted compensation in the

following manner as per the table given below:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earnings	Rs. 12,000.00
2	Transport to Hospital	Rs. 1,000.00
3	Extra-nourishment	Rs. 1,000.00
4	Treatment expenses	Rs. 45,500.00
5	Bystander expenses	Rs. 800.00
6	Pain and suffering	Rs. 20,000.00
7	Permanent disability	Rs. 43,200.00
	TOTAL	Rs.1,23,500.00

4. The multiplier adopted is 18 even though in the schedule a mistake has occurred by showing it as 15. The compensation awarded under the head permanent disability is Rs.43,200/-. The Tribunal has assessed the disability as 5% after observing the appellant and it is noted that there was thinning on the left hand. Even though the learned counsel for the appellant submitted that the same should have been assessed on a higher percentage, in the absence of a disability certificate, this Court will not be justified in assessing more. The possibility of cure in the future, and permanent nature of the disability will have to be assessed by a Medical Board and in the absence of such a certificate, even though the Tribunal noted thinning on

his left hand, we will not be justified in granting any amount under the above head.

5. As far as the other items claimed are concerned, the Tribunal has granted reasonable amount, except for pain and sufferings. Since the appellant sustained fracture and was under treatment as evident from Exts.A4 and A7 certificate, we grant enhancement by Rs.10,000/- under the head 'pain and suffering'.

Accordingly we modify the award as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earnings	Rs. 12,000.00
2	Transport to Hospital	Rs. 1,000.00
3	Extra-nourishment	Rs. 1,000.00
4	Treatment expenses	Rs. 45,500.00
5	Bystander expenses	Rs. 800.00
6	Pain and suffering	Rs. 30,000.00
7	Permanent disability	Rs. 43,200.00
	TOTAL	Rs.1,33,500.00

(Rupees One lakh thirty three thousand and five hundred only)

Thus the appellant will be entitled to a total compensation of Rs.1,33,500/- (Rupees One lakh thirty three thousand and five hundred only) and the enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company is

directed to deposit the amount before the Tribunal within a period of two months and on such deposit being made the appellant can withdraw the amount.

The appeal is allowed to the above extent. The parties will bear their respective costs in the appeal.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge