

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

MACA.No. 1904 of 2013 ()

AGAINST THE AWARD IN OPMV 514/2007 of MACT,THODUPUZHA
DATED 08-03-2013

APPELLANT/PETITIONER:

ARUN V.T. @ SANOOP, NOW AGED 29 YEARS
S/O. KUNJUMON, VETTIKUZHIYIL, VALLIYATHU KARA
KADANAD.P.O., KADANAD VILLAGE, MEENACHIL TALUK
KOTTAYAM DISTRICT, PIN-686653.

BY ADVS.SRI.C.M.TOMY
SRI.MATHEW SKARIA

RESPONDENT(S):RESPONDENTS

1. RAJESH
S/O. SASI, VEETTICKAL HOUSE, VADAKKUMMURI
KARIMKUNNAM.P.O, KARIMKUNNAM VILLAGE
THODUPUZHA TALUK, PIN-685586.

2. THOMAS
KAKKAPAYANICKAL HOUSE, MOOLAMATTOM.P.O.
ARAKULAM VILLAGE, THODUPUZHA TALUK
IDUKKI DISTRICT-685589.

3. THE ORIENTAL INSURANCE CO. LTD.
REPRESENTED BY ITS BRANCH MANAGER, EBENEZER GARDEN
EDAPPALLY, COCHIN-682024.

4. M.P. ASOKAN,
S/O. PRABHAKARAN, MATHAPPARAMBIL(H), VADAKKUMMURI
KARIMKUNNAM.P.O., KARIMKUNNAM VILLAGE
THODUPUZHA TALUK, PIN-685586.

R3 BY ADV. SRI.A.R.GEORGE
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 22-01-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A No.1904 of 2013

Dated this the 22nd day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant, claimant in O.P(M.V) No.514 of 2007 is aggrieved by the inadequacy of the compensation. The Tribunal granted a total compensation of Rs.1,17,555/- as against Rs.2,08,500/- claimed. The accident occurred on 24.05.2007. He was riding a motorcycle on the said day. It was hit by an autorickshaw which was coming from the opposite side and consequently the appellant sustained injuries. Himself and the pillion rider approached the Motor Accident Claims Tribunal by filing separate applications.

2. The details of injuries sustained by the appellant show that there was open fracture of right patella, fracture of tibial spine and crack fracture of lateral condyle of right femur bone. He was admitted in the Chazhikattu Hospital, Thodupuzha on the same day. He was treated with internal fixation of patella and quadriceps tendon repair and was discharged on 3.6.07. He

was again admitted on 2.8.07 and discharged on 12.08.07.

3. Mainly the complaint raised in this appeal is that even though permanent disability has been assessed at 12% by the Medical Board constituted by the Thodupuzha Head Quarters Hospital, Thodupuzha, for the purpose of assessing compensation, the Tribunal has taken 5% only as the disability.

4. It is also submitted that he was earning Rs.12,000/- per mensem through his engagement in budding of rubber trees and the Tribunal has fixed the monthly income only at Rs.4,000/-. It is also submitted that the compensation for pain and suffering and all other heads are too low.

5. The learned counsel for the Insurance Company submitted that there is no evidence regarding his engagement as claimed and there is evidence to the effect that he is working as a salesman in a shop and therefore the disability has not resulted in loss of earning power.

6. We have considered the rival submissions. It is true that there is no documentary evidence to support the monthly income claimed and the Tribunal has fixed it at Rs.4,000/-. While fixing the compensation, the Tribunal considered the fact that the appellant was working as a salesman at that point of time. It

appears that the appellant had appeared before the Tribunal and then it was disclosed that he is working as a salesman. It is found by the Tribunal that he may have difficulties in walking, squatting, sitting, etc., but he is able to do work as a salesman and therefore the disability was assessed at 5% but not on the whole body basis. We find no reason to interfere with the same even though the learned counsel for the appellant submitted that 12% disability ought to have been taken for assessment of the compensation.

7. As far as his case is concerned, there is no functional disability. The compensation awarded by the Tribunal will have to be treated for permanent disability sustained by him.

8. As rightly pointed out by the learned counsel for the appellant, the disability has caused difficulties for him regarding his movements, namely, walking, sitting or squatting. The Tribunal also found that all those are restricted. Therefore we will have to award a reasonable amount towards loss of enjoyment and loss of amenities of life and for the difficulties experienced by the appellant. The Tribunal has granted only Rs.5,000/- under the above head (loss of enjoyment), which we enhance to Rs.25,000/-. Next item is pain and sufferings. It is

seen that he was treated as an inpatient for 22 days in the hospital. He had sustained 3 fractures, injuries and various surgical procedures have also been undertaken. The Tribunal had granted only Rs.18,000/- under the head pain and suffering. In the light of injuries sustained, the period of treatment and other factors, we enhance the same to Rs.35,000/-. As regards the other items, we find that reasonable amounts have been awarded.

9. Accordingly, we refix the compensation as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earning (Rs.4000X4months)	Rs. 16,000.00
2	Transportation expenses	Rs. 1,000.00
3	Extra nourishment	Rs. 4,000.00
4	Bystander expenses (200X22)	Rs. 4,400.00
5	Damage to clothing	Rs. 250.00
6	Medical expenses	Rs. 25,703.00
7	Pain and suffering	Rs. 35,000.00
8	Disability	Rs. 43,200.00
9	Loss of amenities and loss of enjoyment of life	Rs. 25,000.00
	Total	Rs. 1,54,553.00 round off to Rs. 1,54,550.00

(Rupees One lakh fifty four thousand
five hundred and fifty only)

10. The appellant will be entitled to a total compensation

of Rs.1,54,550/- (Rupees One lakh fifty four thousand five hundred and fifty only). This will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimant can withdraw the amount

The appeal is allowed accordingly. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge