

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 273 of 2010 ()

AGAINST THE AWARD IN OPMV 313/2008 of M.A.C.T. TIRUR DATED
25-07-2009

APPELLANT/PETITIONER:

P.K.MUNAWAR FAIROOS, S/O YOOSUF
ENANCHEERI HOUSE, TENHIPALAM P.O.
KOYAPPAPADAM - 673636.

BY ADVS.SRI.P.CHANDRASEKHAR

RESPONDENTS/RESPONDENTS:

1. C.K.MOHAMMED RAFI, S/O IBRAHIM HAJI
CHOLAKUNDIL HOUSE, P.O.MEENDATHUR, THANALLOOR
THIRUR, MALAPPURAM DISTRICT.

2. P.V.SHAMSEER, S/O. MOHAMMED,
KAMEERATHIL HOUSE, P.O.VELIMUKKU, PADIKKAL
676317, MALAPPURAM DISTRICT.

3. BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD.,
5TH FLOOR, MASONS ARCADE, CHEROOTY ROAD
CALICUT - 673001.

R3 BY ADV. SRI.P.S.RAMU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.273 OF 2010

Dated this the 29th day of June, 2015

JUDGMENT

Jyothindranath, J.

The case of the appellant is that while the appellant was travelling as a pillion rider on a motor cycle, he met with a motor vehicle accident involving the said motor bike on which he was travelling as well as a bus bearing Reg.No.KL-10Z-2030. Alleging negligence on the side of the driver of the bus, a claim for compensation was preferred before the Tribunal. Even though the appellant claimed a total compensation of ₹4,05,000/-, the Tribunal awarded only a sum of ₹2,78,240/-. Aggrieved by the quantum awarded, the appellant approached this Court.

2. When the matter came up for hearing, the learned counsel appearing for the appellant argued before us that the injuries are of very serious nature. The appellant sustained fracture of femur right, fracture radius left and fracture both bone right leg.

3. It is submitted that the appellant was admitted in the Medical College Hospital, Kozhikode on 8.1.2008 and was discharged only on 16.02.2008. Thereafter, the treatment continued. It is the case that the appellant is an unmarried boy and the injuries affected his marriage prospects also. It is also the submission that the appellant was a coolie by profession and was earning ₹175/- per day from his avocation. These aspects have not been considered by the Tribunal while the compensation was assessed.

4. The learned counsel for the Insurance Company submitted before us that in this case a sum of ₹3,000/- is considered as the monthly income of the appellant. It is also the case that the Tribunal fixed his daily income as ₹100/-. It is a fact that on all the 30 days of a month, a person cannot work and therefore deduction has to be made. Thus, it can be seen that the Tribunal actually took a higher income than ₹100/- per day. It is also the submission that the compensation awarded by the Tribunal is sufficient and interference by this Court is not warranted.

5. We have perused the records in this case. It can be seen

that the claimant is aged only 19 years. The proper multiplier as per the decision in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** will be 18. It can be seen that the case of the appellant is that he is a coolie by profession. The accident occurred in the year 2008. Thus it will be only just and proper to take an income of ₹4,500/- per month for assessing the compensation towards disability. The disability is seen assessed by the Medical Board at 31%. After going through the heads under which compensation is assessed, we feel that interference is warranted.

6. When a boy aged 19 sustained a disability of 31%, it is an indication that it will directly affect his marriage prospects. More over, his amenities in life also will be affected. Considering the long treatment he had underwent and the nature of injuries and all other attending circumstances, the compensation is refixed as follows:

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Disability	301320 (4500 x 12 x 18 x 31%)
Loss of earnings for 12 months	54000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Expenses for bystander	9000 (200 x 45)
Pain and suffering	40000
Loss of amenities, loss of marriage prospects	50000
Transportation	5000
Extra nourishment	3000
Damage to clothing	1000
Medical bills	25672
Total	488992 Rounded off to ₹ 4,89,000/- (Rupees four lakhs eighty nine thousand only)

7. The enhanced compensation will carry interest @ 9% per annum from the date of petition. It can be seen that the just compensation assessed is above the claim made by the appellant. Thus the appellant shall pay the court fee required for the compensation awarded. The balance court fee shall be realised by the Tribunal on deposit of compensation by the Insurance Company. The Insurance Company shall deposit the compensation within three months. The

amount so deposited shall be released to the appellant.

The appeal is accordingly allowed. The parties shall bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.