

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 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

MACA.No. 940 of 2014 ()

AGAINST THE AWARD IN OPMV 1527/2006 of M.A.C.T., THALASSERY
DATED 25-02-2013

APPELLANT/PETITIONER :-

MAHESH.K.P., AGED 38 YEARS
S/O.BALAN, KAVULLAPURAYIL HOUSE, KANIYARAM P.O
KODALI (VIA) P.O, KANHIRODE, KANNUR

BY ADVS.SRI.A.K.SRINIVASAN
SRI.A.S.BENOY

RESPONDENT/RESPONDENT NO.3 :-

THE NEW INDIA ASSURANCE CO. LTD.,
II FLOOR, CENTURY PLAZA, KANNUR 67001

BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

APPENDIX

Appellant's Exhibits :-

Annexure A :- Medical certificate issued by Dr.K. Sukumaran MD (General medicines); Medical Specialist; Joint Director (Rtd.); IMS (Govt of Kerala), Kannur - 7 dated 22.3.2014.

Respondent's Exhibits :- NIL.

//True Copy//

P.A. to Judge

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

M.A.C.A. No.940 of 2014

Dated this the 23rd day of January, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal before this Court, the claimant is aggrieved by the inadequacy of the compensation. The appellant is a carpenter by profession, aged 31 years and unmarried as on the date of accident. The accident occurred on 30.7.2006 at 8.15 p.m. while he was riding motorcycle bearing registration No.KL-13G/1923 with a pillion rider, who is the petitioner in OP(MV) No.1528 of 2006. When they were riding the motorcycle towards Koodali, the offending vehicle, an autorickshaw bearing registration No.KL-13C/8529 driven by the 2nd respondent from Anjarakandi side, rashly and negligently, hit against the motorcycle in the public road near Vayanthode junction. They were thrown on the road and sustained severe bodily injuries. They were initially taken to the AKG Hospital and thereafter to the Thejasvini Hospital, Mangalore for expert management.

2. Learned counsel for the appellant submits that the appellant sustained serious injuries especially to the right hand,

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which was resulted into loss of mobility of his fingers, in the sense that he is unable to do the carpentry work. He is having clawed right hand, which denies him continuance of the job as a carpenter. Therefore, it is a case of 100% disability and the learned counsel relied upon the judgment of the Apex Court in **Basappa S/o Sanganabasappa Bahvikatti v. T. Ramesh S/o Tangavelu & Anr.** [2014 SAR (Civil) 1145], especially paragraph 14. It is also submitted that the compensation assessed under various heads is thoroughly inadequate.

3. The Tribunal has granted a total compensation of ₹1,08,800/-. The question, therefore, is whether adequate compensation was granted by considering the permanent disability of the petitioner as well as the occupational disability. Exts.A1 to A8 series are the documents relied upon by the appellant. Ext.A7 is the copy of the identity card of the petitioner issued from Kerala Construction Workers Welfare Fund Board, which will support the case of the appellant that he is a carpenter by profession. Ext.A6 is the copy of the driving licence.

4. The appellant sustained serious injuries like crepitus

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over dorsem of hand, clawed right hand, communitied 3, 4, 5 metacarpal shaft fracture, low backache due to inter vertebral disc prolapse etc. Learned counsel for the appellant submitted that even though he was treated in Mangalore, 200kms away from his native place, a very meagre amount has been granted towards transportation expenses, namely, ₹3,000/-. We find from paragraph 11 of the award that he was treated as an inpatient on 31.7.2006 and discharged on 10.8.2006 with incomplete recovery. Surgery was done later on 4.8.2006 and internal fixation with K-wire was performed under general anesthesia. He had attended two reviews thereafter and in the mean while he was advised to take proper rest also.

5. He was examined as PW1 before the Tribunal. Before the Tribunal, he explained that due to the injury sustained to his right hand and fingers, he has lost mobility of his fingers and he is unable to pursue avocation as a carpenter. Ext.A2 is the copy of the wound certificate and Ext.A3 is the discharge summary. The Tribunal has recorded that "the contents of Exts.A2 and A3 show that the petitioner sustained swelling tenderness abnormal mobility and crepitus over the dorsum of his right hand.

Movements of fingers restricted and painful and X-ray right had taken confirmed communitied 3rd, 4th and 5th metacarpal shaft fracture". Exts.A4 and A5 series, OP cards show that he had attended reviews in that hospital. Therefore, the total inpatient treatment is 11 days in Thejasvini Hospital and one day in AKG Hospital.

6. The Tribunal has fixed the monthly wages at ₹4,000/- from his profession as a carpenter against his claim of ₹5,000/-.

7. The Apex Court in **Basappa S/o Sanganabasappa Bahvikatti v. T. Ramesh S/o Tangavelu & Anr.** [2014 SAR (Civil) 1145] in paragraph 12, considered the principles discussed in **Raj Kumar v. Ajay Kumar** [(2011) 1 SCC 343], wherein in paragraph 14, it has been laid down as follows :-

"For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred per cent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the

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case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand,. Sometimes the injured claimant may be continued in service, but may not be found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity."

8. This paragraph is highlighted by the learned counsel for the appellant to contend that a parallel can be drawn here also and since three of the fingers are clawed he cannot do the carpentry work, leading to 100% disability resulting in loss of earning power to the same extent.

9. The disability assessed by the medical board is 11%. PW3, the doctor who was a member of the Medical Board was examined. He was stated that "being a carpenter he cannot continue to work with the above disability".

10. The apparent reason for not accepting 100% disability

by the Tribunal was that there may be chance to improvement in future. As rightly pointed out by the learned counsel for the appellant, the doctor was examined before the Tribunal after six years of the accident and even then there was no indication of any improvement.

11. Being a carpenter, we are of the view that the disability will be 100% as far as the appellant is concerned, for pursuing his profession and therefore, the compensation will have to be assessed accordingly.

12. Being a carpenter, we will be justified in fixing the monthly income as ₹5,000/- especially in the light of the evidence of PW1 that he was getting ₹225/- per day. Even if 25 days work in a month is assessed, the same will be reasonable.

13. He was aged 31 years at the time of the accident and the multiplier to be adopted is 16. Therefore, as far as loss of earning power is concerned, the amount will be ₹9,60,000/- (5000x12x16).

14. The Tribunal has granted ₹25,000/- for pain and suffering. It will be enhanced to ₹50,000/- in the light of the serious injuries and the hardship he had suffered and the

treatment procedures he has undergone. Since we have granted amount for loss of earning power, we need not grant amount separately for loss of amenities.

15. As far as the transportation expenses is concerned, the Tribunal has granted only ₹3,000/-. As rightly pointed out by the learned counsel for the appellant that he had been visiting the Thejasvini Hospital, Mangalore on different occasions. In the light of the frequent visits he had to make, we find that he will be entitled for ₹13,000/- towards the same.

16. Since the appellant is a bachelor, we will be justified in granting a reasonable amount towards loss of marriage prospects. The Tribunal has granted ₹15,000/- for loss of amenities. But the fact that he was a bachelor and there is loss of prospects of marriage has not been considered by the Tribunal. Therefore, we grant a total amount of ₹35,000/- under these heads. Thus, we will convert the amount granted under loss of amenities to ₹35,000/-.

17. The total claim was only ₹2 lakhs. It is explained that the application was filed even when he was under treatment and all the contingencies were not envisaged at that point of time. In

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the light of the judgment in **Nagappa v. Gurudayal Singh** [2003 (1) KLT 115 (SC)], there is no restriction for the Tribunal or the court to grant amount after fixing the just and fair compensation even exceeding the claim. Accordingly, we modify the award as under :-

Head of claim	Amount awarded by Tribunal	Modified amount
Loss of earnings	24000	30000
Pain and suffering	25000	50000
Loss of amenities	15000	35000
Transportation charges	3000	13000
Bystanders expense	2400	2400
Extra nourishment	3000	3000
Damage to clothing	500	500
Medical expenses	15900	15900
Loss of earning power (5000x12x16)	20000	960000
Total	108800	1109800

Thus, the appellant will be entitled to a total compensation of **₹11,09,800/- (Rupees Eleven Lakhs Nine Thousand Eight Hundred only)**, which will carry interest at the rate of 9% per annum. The insurance company is directed to deposit the entire amount of compensation within three months from the date of receipt of a copy of this judgment, less the amount already

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deposited before the Tribunal. Court fee, if any, payable will be recovered before disbursing the amount to be deposited. No costs.

Sd/-
T. R. RAMACHANDRAN NAIR
JUDGE

Sd/-
P.V.ASHA
JUDGE

//True Copy//

P.A. To Judge

Jvt