

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 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

MACA.No. 2038 of 2013 ()

AGAINST THE AWARD IN OPMV 279/2010 of M.A.C.T., ERNAKULAM DATED 07-02-2013

APPELLANT(S)/PETITIONER:

GOPAKUMAR.G., AGED 30 YEARS
S/O.GOPALAKRISHNAN, BINDHU BHAVAN, MANNADIKONAM
URUTTAMBALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.SAKIR.K.H.

RESPONDENT(S):RESPONDENTS

1. VIJAYAKUMAR, S/O. NARAYANA PILLAI, 8/157, VILAYIL VEEDU,
NEDUVELI, VEMBAYAM, THIRUVANANTHAPURAM-695 61.
2. ICICI LOMBARD GENERAL INSURANCE CO.LTD,
THIRUVANANTHAPURAM
REPRESENTED BY ITS MANAGER LEGAL.695 002

R2 BY ADV. SRI.R.AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.2038 of 2013

Dated this the 8th day of January, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident occurred on 11.3.2009 at about 1.30 p.m. while he was riding his motor cycle on being hit by a tata LMV. He fell on the road and sustained severe injuries including facial injuries. He was admitted in Lakshore Hospital, Nettoor and treated as an inpatient from 11.3.2009 to 19.3.2009 and thereafter from 26.5.2009 to 28.5.2009. He sustained the following injuries:

“ Lacerated wound 7 x 2 cm over the occipital parietal region

Avulsed teeth

Lacerated wound on the upper lip extending the left end of nose

Lacerated wound right side of chest 6 x 1 cm

5 x 1 cm and 7 x 1 cm lacerated wound over lower lip, fracture of anterior alveolus involving teeth

Communitated fracture anterior, lateral and medial wall of maxillary sinus

Minimally displaced fracture maxillary bone on the left side with

fracture lateral wall of left orbit and zygomatic arch.”

The appellant incurred a sum of Rs.1,36,346/- towards medical expenses.

The Tribunal awarded compensation to the tune of Rs.1,82,900/- as against the claim for Rs.4 Lakhs.

2. The appellant was working as a mason and was aged 27 years. This appeal is filed seeking enhancement of compensation on the ground that the compensation awarded is thoroughly inadequate. Learned counsel appearing for the insurance company pointed out that the compensation awarded is reasonable and it does not require any enhancement.

3. From the discharge certificate issued by Lakshore Hospital, it is seen that the appellant had undergone two surgeries and the treatment continued even after his discharge from the hospital, for a period of 2-3 months. The Tribunal reckoned his income at the rate of Rs.5,000/- per month and awarded a sum of Rs.10,000/- towards loss of earnings for a period of two months. We find that the Tribunal has awarded compensation reasonably on almost all the heads. However, under the head of compensation towards pain and suffering, a sum of Rs.20,000/- alone is seen granted. In view of the nature of injuries sustained to his mouth on account of which he was unable to open his mouth and have the food

properly, we find it just to enhance the compensation under this head. Therefore, we grant a sum of Rs.35,000/- towards compensation for pain and suffering. Towards bystander's expenses, as against his claim for Rs.20,000/- only a sum of Rs.2,400/- was granted. He was treated as inpatient for a period of 12 days. Reckoning Rs.250/- per day, the compensation under this head will come to Rs.3,000/-. On account of facial injuries the appellant sustained disfiguration as well as loss of amenities and enjoyment in life. The Tribunal has awarded only Rs.8,000/- under this head. We deem it fit to enhance the compensation under this head to Rs.20,000/-. Therefore, the compensation granted is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount modified</i>
Loss of earnings	10000	10000
Transport to Hospital and back	2000	2000
Extra nourishment	2000	2000
Damage to clothing	500	500
Medical expenses	138000	138000
Bystander's expenses	2400	3000
Future treatment expenses	0	0
Pain and suffering	20000	35000
Continuing permanent disability	0	0
Loss of future earnings	0	0

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount modified</i>
Loss of amenities and enjoyment in life	8000	20000
Total	182900	210500

(Rupees Two Lakhs Ten Thousand and Five Hundred only)

The above amount will carry interest at 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

kav/