

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

MACA.No. 1675 of 2011 ()

**AGAINST THE AWARD IN OP(MV) 2040/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR DATED 31-05-2011**

APPELLANT/PETITIONER:

**KAJA HUSSAIN,
S/O CHINNAPPA RAWATHAR
NOW RESIDING AT C/O RAI MARAKKAR HOUSE
R.V. MARIYATHU, KUNDOKKADAVU, THRISSUR DISTRICT.**

BY ADV. SRI.V.BINOY RAM

RESPONDENTS/RESPONDENTS:

- 1. KRISHNANKUTTY,
S/O RAMANKUTTY, 5/210, NENMARA
GRAMA PANCHAYATH, PALAKKAD DISTRICT. 678 508**
- 2. RADHAKRISHNAN,
S/O APPU, PANAMADU HOUSE, MATTUPADAM
ALATHUR, PALAKKAD DISTRICT 678 541**
- 3. THE NEW INDIA ASSURANCE COMPANY LIMITED,
SREEVALLI BUILDINGS, ANICODE, CHITTUR
PALAKKAD DISTRICT. 678 101**

R3 BY ADV. SRI.A.A.ZIYAD RAHMAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.1675 of 2011

Dated this the 20th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

Complaining about the inadequacy of the compensation the appellant/claimant has filed this appeal against the award in O.P.(M.V.)No.2040/2004 on the file of the Motor Accidents Claims Tribunal, Thrissur.

2. The accident occurred on 24.4.2004 at about 8.30 p.m. while he was riding a motorcycle bearing registration No.KL-9M 1277 through Vithanassery - Vallangi public road. The vehicle was hit by another motorcycle bearing registration No.KL0M 7046 and on sustaining serious injuries he was taken to the Government Hospital, Nenmara and later he was referred to the Medical College Hospital, Thrissur.

3. The total period of treatment is 34 days which is

clear from discharge summary Ext.A6 series, Ext.A7 treatment certificate and Ext.A10 series medical bills. Initially he was admitted on 24.4.2004 with abrasions on forehead, below knee and right cheek. He was shifted to Medical College Hospital, Thrissur on 24.5.2004 and there fracture of both bones of right leg was diagnosed. He was managed conservatively with AK slab followed by AK cast. He was discharged on 6.5.2004. He was admitted again on 17.6.2004 due to delayed union of the fracture. Open reduction and internal fixation and bone grafting were done followed by POP cast application. He was discharged on 9.7.2004 and the plaster was removed on 4.9.2004.

4. The main arguments by the learned counsel for the appellant are about the non-acceptance of 10% disability in full, fixation of monthly income only at Rs.2,500/- and non-grant of amount towards loss of amenities and future medical expenses. He also sought for enhancement of amount fixed towards pain and suffering and other heads.

5. Learned counsel for the Insurance Company submitted that the percentage of disability calculated by the Tribunal at 4% is correct. It is submitted that it is only a permanent partial disability of a limb.

6. The learned counsel for the appellant submitted that the doctor's certificate will show the whole body disability which is marked as Ext.A9.

7. It is also submitted by the learned counsel for the respondent that there is no certificate issued by a Medical Board.

8. After considering the details of the injuries sustained, treatment and the disability noticed, we will adopt the percentage as 6% for the purpose of awarding the compensation. The certificate shows that he has got inability in squatting due to pain in right ankle. Other complaints have also been recorded in the disability certificate.

9. For the purpose of assessing compensation, we fix the monthly income as Rs.4,000/- as he is a manual worker

in chips making. In the light of the fact that he had been treated in different hospitals and he had undergone surgeries, we adopt an amount of Rs.40,000/- for pain and suffering. The Tribunal has not granted any amount towards loss of amenities, which we fix at Rs.35,000/-. We have granted enhanced amount towards pain and suffering and loss of amenities in view of the fact that there is delayed union of fracture and further other disabilities are there. Since there is an implant in his body, we fix an amount of Rs.15,000/- towards future medical expenses also. We also reasonably enhance the amount towards other items also and the total compensation is re-fixed in the following manner:

Head of claim	Amount awarded Rs.
Loss of earning	4x4000 16000
Medical expenses	6902
Bystander's expenses	34x200 6800
Transportation	2000
Extra nourishment	3000
Damage to clothing	1000
Pain and suffering	40000

Head of claim	Amount awarded Rs.
Disability	4000x12x13x6/100 37440
Loss of amenities	35000
Future treatment	15000
Total	1,63,142 Rounded off to Rs.1,63,150/- (Rupees one lakh sixty three thousand one hundred and fifty only)

10. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

11. The Tribunal has found that the Insurance Company will be liable to satisfy the award, which finding we confirm. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellant will be entitled for the release of the amount.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/