

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. 429 of 2010 ()

AGAINST THE AWARD IN OPMV 1557/2005 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, MANJERI DATED 02-11-2009

APPELLANT/PETITIONER:

DR.MUHAMMED UNNI @ MUHAMMUNI,
S/O.MOHAMED MUSALIYAR, 'THAVAKKAL MANZIL'
MELATTUR P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.P.VENUGOPAL (1086/92)

RESPONDENTS/RESPONDENTS:

1. SIDHIQUE S/O MOYINKUTTY,
MOOLATH HOUSE, EDAVANNA AMSOM, ERANHIKODE
KUNDUTHODU, MALAPPURAM DISTRICT.

2. SHOUKATH R.I.,
S/O.EBRAHIM, R.I.HOUSE, MAIN ROAD
THALASSERI, KANNUR DISTRICT.

3. UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE, MANJERI
MALAPPURAM DISTRICT REPRESENTED BY ITS
DIVISIONAL MANAGER.

R,R3 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.429 of 2010

Dated this the 8th day of January 2015

JUDGMENT

Ramachandran Nair, J.,

The appellant who was the claimant in O.P.(MV) No. 1557 of 2005 before the Motor Accidents Claims Tribunal, Manjeri is aggrieved by the inadequacy of the compensation.

2. The accident in this case occurred on 9.8.2005. He was travelling in a bus bearing Registration No. KL-10-E/5787 from Melattur to Pandikkad through the Melattur-Pandikkad public road. The offending vehicle is a lorry bearing Registration No. KL-11/9248 which came in the opposite side and hit against the bus resulting in the accident. He sustained grievous injuries in the accident and immediately he was admitted as inpatient in Al-Shifa Hospital, Perinthalmanna. His right hand was amputated dorsal to shoulder joint. Open fracture to left little finger was managed by suturing and strapping. Thereafter he was discharged.

3. Learned counsel for the appellant submitted that the total compensation claimed was Rs.14,10,000/- which was limited to Rs. 10 lakh and the Tribunal granted a total compensation of Rs. 2,94,716/-. It is submitted that as against the claim of monthly income of

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Rs.20,000/-, the Tribunal assessed it only at Rs. 3000/- per month. He was aged 56 years and is a retired Ayurvedic Doctor and thereafter was having consultation in his residence and he was attending other Ayurvedic Pharmacies viz., Arya Vaidya Pharmacy, Coimbatore Ltd., Agency, Thuvvur, Kottakkal Arya Vaidyasala, Pookottumpadam and S.D.Pharmacy Agency, Tuvvur. He was also attending the Pharmacy of one Velayudhan Vaidyar which are evident from Exts. A6 to A9. It is submitted that the disability certificate showed that the petitioner had sustained 51% permanent disability, because of the amputation at right upper limb, fracture PPx(L)LF. As far as left finger is concerned, there is disability. It has been assessed by the Medical Board attached to the Medical College Manjeri(Ext.X1)

4. It is further submitted that going by the schedule of Employees Compensation Act 1923, the percentage of functional disability will be 90%.

5. It is a case where the petitioner who is a retired medical officer from Government Service will not be able to function as before, to examine patients and to perform other activities connected with the profession and he may have to depend upon the service of another person, even for his personal needs. These aspects have not been considered by the Tribunal and no amount has been granted towards

loss of amenities and for loss of enjoyment of life.

6. It is submitted by learned counsel for the Insurance company that Exts.A6 to A9 have not been properly proved. it is further pointed out that since Ext.X1 disability certificate shows only 51% disability, the same alone could have been accepted by the Tribunal and no other evidence was there to prove 90% functional disability.

7. That the appellant is a retired medical officer is not disputed. What we find from the award of the Tribunal is that in paragraph 7 it observed that after considering Exts.A6 to A9 series of certificates and considering the fact that he is a retired Aurvedic Doctor, the Tribunal fixed his monthly income at the rate of Rs. 3000/-. It is clear from the averments made before the Tribunal that he was having consultation in his house and he was attending various pharmacies as a consultant physician (part-time). Therefore, according to the applicant, he was getting a monthly income of Rs. 20,000/- per month from his profession besides his service pension.

8. The certificates Exts.A6 to A9 certified that for part-time consultation, he was being paid at the rate of Rs. 3,000/- per month by the said pharmacies. Of course, the authors of the certificates have not been examined. Even then, in the light of the acceptance of the certificates by the Tribunal and in the light of the fact that he was a

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retired ayurvedic medical officer, according to us, the monthly income assessed by the Tribunal at the rate of Rs. 3,000/- is too low. He is a qualified Ayurvedic doctor. As rightly pointed by the learned counsel for the appellant even for daily labourers during the said year, the income would be much more. Considering various aspects, we will be justified in fixing the monthly income at the rate of Rs. 10,000/- per month.

9. The Tribunal has granted only Rs.15,000/- towards pain and suffering. The multiplier taken is only 8 and going by the judgment of the Supreme Court reported in ***Sarala Varma v. Delhi Transport Corporation [2010 (2) KLT 802]***, the multiplier will be 9.

10. One of the items of heads under which the appellant is entitled for damages is for loss of amenities in life and loss of enjoyment of life. Being the right limb even for his personal needs, he will have to depend upon the help of another. The appellant will not be able to carry on his normal activities, conduct travelling or even carry out the functions as a physician as before in the light of the fact that the right arm has been amputated. The Tribunal has not granted anything by way of compensation under the said head. We are of the view that an amount of Rs.1,00,000/- can be granted towards loss of amenities and for loss of enjoyment of life. For pain

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and suffering also, the amount awarded; Rs.15,000/- is too low and we enhance it as Rs. 50,000/- in view of the seriousness of the injuries and treatment etc. The accident is of the year 2005.

11. We refix the compensation in the following manner:

<i>Sl No.</i>	<i>Heads</i>	<i>Award amount</i>	<i>Modified award</i>	<i>Basis</i>
1	Transportation to the hospital & for reviews	500	5000	
2	Damage to clothing	250	250	
3	Extra nourishment and bystanders expenses	1000	5000	
4	Pain and suffering	15000	50000	
5	Medical bills (eligible)	95086	95086	
6	For loss of income for 10 months @ Rs, 10,000/- per month	30000	100000	10,000x10
7	For future treatment	5000	5000	
8	For disability	1,46,880	550800	(10,000x12x9x51/100)
9	Compensation for loss of amenities and loss of enjoyment of life		100000	
	Total	2,94,716	9,11,136/-	

(Rupees Nine lakh Eleven Thousand One Hundred and Thirty Six only)

12. The Tribunal has granted interest only at the rate of 7.% p.a. In the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513], we fix the interest at the rate of 9% p.a from the date of petition.

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The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment. The appeal is allowed accordingly. No cost.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge