

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 1728 of 2011 ()

**AGAINST THE AWARD IN OP(MV) 1921/2007 OF PRINCIPAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL,KOZHIKODE DATED 24-04-2010
APPELLANT/PETITIONER:**

**RALI, AGED 24 YEARS
W/O.SHYJU, KUNNUMPARAMBATH HOUSE, VENGARI P.O.
KOZHIKODE**

BY ADV. SRI.NIRMAL. S

RESPONDENTS/RESPONDENTS:

**1. CHANDRAN, AGED NOT KNOWN
S/O.KANARANKUTTY, 34/1011, KOLADATH HOUSE
P.O.CIVIL STATION, KOZHIKODE PIN 673 001**

**2. NATIONAL INSURANCE CO.LTD;
2ND FLOOR, NOOR COMPLEX, P.B.NO.811
MAVOOR ROAD, KOZHIKODE, PIN 673 661**

**R-2 BY ADV. SRI.E.M.JOSEPH
R2 BY ADV. SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.1728 of 2011

Dated this the 21st day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal, the claimant seeks enhancement of the compensation granted. She was aged 24 at the time of accident and it had occurred while she was travelling as a pillion rider of the motorcycle bearing registration No.KL-11-Q-9796 from Kottoli to Civil Station. It was hit by an autorickshaw bearing registration No.KL-11-S-8256. She sustained serious injuries viz. fracture both bones of right leg lower 1/3rd fracture P1 (R) big toe, lacerated wound right foot and right knee and lacerated wound over face.

2. The certificate issued by the Medical Board Ext.C1 shows that there is no permanent disability. As against the total claim of Rs.2 lakhs, the Tribunal has granted Rs.21,065/- with 7% interest from 26.11.2007.

3. We heard learned counsel on both sides.

4. It is the submission of the learned counsel for the appellant that proper assessment was not made by the Tribunal to appreciate various aspects. It is submitted that the amount awarded towards pain and suffering, bystander's expenses, transport to hospital, extra nourishment and loss of amenities is too low. It is also submitted that even though an internal fixation was made viz. ORIF no amount has been granted towards future medical expenses.

5. Learned counsel for the Insurance Company submitted that there is no evidence that the appellant sustained any permanent disability.

6. We find from the evidence that she was treated as inpatient in the hospital for a total period of 22 days under three different spells. Initial period was from 9.6.2007 to 14.6.2007 supported by Ext.A3 discharge card and the second spell is from 25.7.2007 to 9.8.2007 supported by Ext.A4. The third one is supported by Ext.A5 which is from 25.3.2009 to 29.3.2009.

7. We find from the medical records that ORIF was done. It necessarily requires a further surgery for removing the implant. Therefore a reasonable amount can be granted towards future medical expenses at the rate of Rs.10,000/-. As far as pain and suffering is concerned in the light of the seriousness of the injuries including fractures and the fact that she had undergone surgery, we fix an amount of Rs.35,000/- and for loss of amenities we fix an amount of Rs.10,000/-. We grant amount towards bystander's expenses at the rate of Rs.300/- per day totalling Rs.6,000/- and we also grant a reasonable enhancement for transportation expenses three times, extra nourishment. Therefore, we re-fix the compensation as follows:

Head of claim	Amount re-fixed in Rs.
Transportation	1500
Extra nourishment	2000
Loss of earnings	4000
Bystander's expenses	6000
Pain and suffering	35000
Loss of amenities	10000
Future medical expenses	10000

Head of claim	Amount re-fixed in Rs.
Total	68500 (Rupees sixty eight thousand five hundred only)

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition viz. 26.11.2007 till realisation.

The Insurance Company has been found liable to satisfy the award, which finding we confirm and 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

//True copy//
P.A. TO JUDGE

shg/