

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 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

MACA.No. 1737 of 2011 ()

AGAINST THE AWARD IN OPMV 339/2007 of MACT,KASARAGOD DATED
06-07-2011

APPELLANT/APPELLANT:

DR.RAJAGOPALA RAO N
S/O. SRIDHARA NALLURAYA, AGED 61 YTEARS, SREE PADMAM
PALAKUNNU, PALLIKKARA 2ND VILLAGE, HOSDURG TALUK
P.O. BEKKAL 671318

BY ADVS.SRI.M.M.ANTO
SRI.GEORGE MATHEWS
SMT.CELINE JOSEPH

RESPONDENTS/RESPONDENTS:

1. SHIJITH K.P.
S/O. VELAYUDHAN K.P. KOLLUPALAMBIL HOUSE
PARAPPUR P.O. KOTTAKKAL, MALAPPURAM DISTRICT
PIN 676 503

2. DINUPA,
W/O. SREESANTH, A/47, MALAPARAMBA HOUSING COLONY
KOZHIKKODE DISTRICT, P.O. MALAPARAMBA 673009

3. NATIONAL INSURANCE COMPANY LTD
DIVISIONAL OFFICE NO.1, PARCO TOWERS, P.M.TAJ ROAD
KOZHIKKODE DISTRICT 673001

R3 BY ADV. SRI. M.A. GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1737 OF 2011

Dated this the 3rd day of September, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV)No.339/2007 on the file of the Motor Accidents Claims Tribunal, Kasargod. The grievance of the appellant is that even though the Tribunal found that just compensation is ₹1,90,570/-, on the ground that the claim was limited to ₹1,50,000/-, awarded only the said amount. It is also the grievance that the just compensation assessed is also on a lower side. The relevant facts for considering this appeal are as follows :

2. The appellant/claimant is a Doctor practicing at Palakkunnu. While he was travelling in a Qualiz car bearing Reg.No.KL 07 AA 9922, he met with an accident on 28.8.2006. The vehicle capsized. Alleging negligence on the side of the driver of the vehicle as cause of the accident, he moved a compensation claim before the Tribunal for an amount of ₹1,50,000/-. After recording the

evidence, the Tribunal assessed the compensation as ₹1,90,570/-. On the ground that the claim is only for ₹1,50,000/-, the said amount alone is awarded as compensation.

3. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that the Tribunal should have granted the whole compensation assessed to the appellant following the dictum laid down in various decisions of the Apex Court. It is also the submission that the appellant being a Doctor by profession, the disability will positively affect his amenities. That aspect is not considered. It is also the submission that the disability actually affected his future prospects. It is also the submission before us that the compensation awarded under various heads including pain and suffering are on a lower side. A refixation to arrive at the just compensation is necessary and it is also submitted before us that the appellant is ready to pay the court fee for the amount that will be awarded over and above the claim originally made before the Tribunal.

4. We heard the learned counsel for the Insurance Company. The learned counsel for the Insurance Company submitted before us

that the claim is voluntarily limited by the appellant, no illegality or irregularity committed by the Tribunal. It is true that an amount of ₹1,90,570/- is assessed as compensation. When the court fee is paid only for a lower amount and voluntarily the appellant limited his claim to ₹1,50,000/-, interference by this Court is not warranted. It is also submitted before us that the compensation awarded under various heads by the Tribunal is also adequate and sufficient.

5. After going through the award and also considering the dictum laid down by the Supreme Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)**, we feel that this is a case where interference is warranted. Surely the appellant will be entitled for the compensation assessed over and above the claim. More over in this case we feel that compensation awarded on some heads are also on a lower side.

6. Under such circumstances, just compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Compensation for loss of earning	26000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport expenses	1000
Extra nourishment	1000
Expense for treatment	39750
Expense for bystander	500
Compensation for pain and suffering	30000
Compensation for permanent disability	112320
Compensation for loss of amenities	20000
Total	230570 (Rupees two lakhs thirty thousand five hundred seventy only)

7. Thus, the appellant is entitled for a total compensation of ₹2,30,570/-. The compensation ordered to be entitled to the appellant over and above the compensation awarded by the Tribunal will bear 9% interest from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within three months. If the petitioner is not remitting the court fee for the amount awarded over and above the amount awarded by the Tribunal, on depositing the

amount, the court fee shall be realised by the Tribunal and the balance amount alone be released to the appellant.

The appeal is accordingly allowed. The parties shall bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.