

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

MACA.No. 1741 of 2011 ()

AGAINST THE AWARD IN OPMV 542/2003 of ADDL.MACT, THALASSERY
DATED 28-02-2011

APPELLANT(S): PETITIONER

SRUTHY.P. (MINOR), REP.BY DINESH BABU
D/O.DINESH BABU, AGED 15 YEARS
THROUGH HER FATHER AND NEXT FRIEND DINESH BABU
S/O.NARAYANAN, AGED 41 YEARS, POLORAMKANDI HOUSE
ERUVATTI AMSOM, KOZHUR AMSOM, P.O.ERUVATTY
KANNUR DISTRICT

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S): RESPONDENT

THE NEW INDIA ASSURANCE CO.LTD., KANNUR
KANNUR PIN 670 001

R, BY ADV. SMT.T.C.SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1741 of 2011

Dated this the 6th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

The appeal is filed by the claimant before the Tribunal, aggrieved by the inadequacy of compensation. The injured is a minor girl who sustained very serious injuries while she was aged only 7 years. The accident occurred on 1.3.2003. The total amount claimed was Rs.25 Lakhs and the Tribunal has granted a sum of Rs.1,72,200/-.

2. The offending vehicle is a tempo van bearing Reg. No. KL-13/E 8497. The minor girl was proceeding to her house from Pattiam at about 15.15 hours. The tempo van hit her and it ran over the left leg of the child and she was thrown away to some distance from the spot. She was immediately taken to Thalassery Co-operative Hospital and treated there as inpatient till 2.3.2003 and thereafter she was referred to Heart Hospital, Thrissur and remained as inpatient till 17.3.2003. She was subjected to a major surgery and her left leg below knee was

amputated.

3. We heard learned counsel on both sides with regard to the grievances raised in this appeal.

4. Learned counsel for the appellant submitted that the girl sustained the injuries at the young age of 7 and her whole prospects in life have been severely affected by the amputation of left leg. It is submitted that the compensation fixed by the Tribunal is too low.

5. Our attention was invited to the evidence in the matter. The injuries noted in Ext.A2 wound certificate are the following: Crush injury of lower 2/3 of left leg and entire ankle and foot with loss of skin, muscle and bones in the leg, ankle and dorsum of left foot, distal part of left and foot avascular, all vessels and nerves of lower leg severed; loss of bone from tibia, fibula, all tarsals and metatarsals; hematoma right side of forehead with peri-orbital hemorrhage right; bleeding from nostrils; contused abrasion lower chest wall left side and abrasion over knees.” The medical bills have been marked as Ext.A5 series showing a total amount of Rs.42,972/-. Ext.A6 is produced to prove her date of birth which is 22.11.1995. Exts.A9 and A10 are the

medical records including discharge summary.

6. The disability is clear from Ext.X1 disability certificate issued by the Medical Board constituted by the District Hospital, Kannur stating that the appellant sustained whole body permanent disability of 30%.

7. While fixing the compensation, the Tribunal awarded amounts in the following manner:

<i>Head of claim</i>	<i>Amount awarded</i>
Transport to hospital	5000
Extra nourishment	5000
Medical expenses	40000
Bystanders expenses	1700
Pain and suffering	15000
Permanent disability	67500
Future treatment	30000
Loss of amenities	5000
Cost of artificial limb and crutches	3000
Total	172200

8. Learned counsel for the appellant submitted that the amount awarded towards pain and suffering, going by the seriousness of the injuries and the treatment given and amputation, at Rs.15,000/-, is too low. It is also submitted that for permanent disability only a sum of

Rs.67,500/- and for loss of amenities, etc., only a sum of Rs.5,000/- has been granted. Rs.3,000/- has been granted towards cost of artificial limb and crutches and towards bystander's expenses only a sum of Rs.1,700/- is granted. Reliance is placed on the judgment of the Apex Court in **Master Mallikarjun v. Divisional Manager, The National Insurance Company Ltd. and another** (2013 (3) KLJ 815). It is further submitted that sufficient amount has not been granted towards future treatment expenses and for purchase of artificial leg which has to be replaced from time to time and for loss of marriage prospects.

9. Learned counsel for the insurance company submitted that the girl was not an earning member and therefore the compensation can be awarded only by taking a notional income. It is also submitted that as the limb has been amputated, there is no cause of fixing amount towards future treatment. The above contention is answered by the learned counsel for the appellant by submitting that being a minor girl and as she is of growing age, every time the appellant will have to resort to medical treatment sine bones will be growing. This will result in much pain and difficulty to the appellant.

10. We have considered the rival submissions. **In Master Mallikarjun's case** (2013 (3) KLJ 815), the Apex Court has considered the manner of fixing compensation where the children suffer disability on account of motor vehicle accident. We reproduce paragraph 12 therein:

“Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take different yardstick.....”

11. Going by the above paragraph, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs will be reasonable compensation. This will be in addition to the actual expenses for

treatment, attendant, etc. Therefore, the same will take in amount towards pain and suffering as well as for loss of amenities also. According to us, the said principle can be adopted herein also in fixing compensation.

12. As regards the special damages, the appellant will be entitled for more amounts. We enhance the bystander's expenses to Rs.3,400/-, viz. at the rate of Rs.200/- per day. For transport to hospital, we grant an amount of Rs.10,000/-, since the treatment had continued in two hospitals.

13. As far as cost of artificial limb and crutches is concerned, what is granted by the Tribunal is only Rs.3,000/- is awarded. It is clear from the fact that the girl will have to depend upon artificial limb for her normal avocations to be performed. It is a matter of common knowledge that the artificial limb will have to be replaced from time to time and it may cost more amount, going by the prevailing rates also. Apart from the same, she will have to undergo future treatment because of common problems related to amputation, which will cause more pain and other problems. In that view of the matter, we are of the view

that she will have to undergo treatment during her whole life. In the recent judgment of the Apex Court in **Dinesh Singh v. Bajaj Allianz General Insurance Company Limited and another** {(2014) 9 SCC 241} wherein the left leg of an Engineering student was amputated, the issues have been considered as to how compensation for future treatment and cost of artificial limb will have to be assessed. In paragraph 14, the Apex Court has discussed the evidence in detail and has awarded compensation at Rs.5,50,000/-. It was held as follows in paragraph 14:

“14. The Tribunal has awarded Rs.5,00,000/- towards future medical expenses. Considering the fact that the appellant still requires treatment and has to change his artificial limb as and when required, we are of the considered opinion that the compensation under the said head needs enhancement, and accordingly, we enhance the same by another Rs. 50,000/-. The appellant therefore, would be entitled to Rs.5,50,000/-.”

It is very clear that the loss of limb will cause lot of pain and other related problems. Therefore, proper amounts will have to be granted towards future treatment. We award a consolidated amount of Rs.2.5

lakhs towards cost of artificial limb which has to be replaced from time to time and for future treatment. We also award an amount of Rs.1,50,000/- towards loss of marriage prospects since the injury and the resultant amputation will greatly affect her marriage prospects.

Accordingly, we recompute the compensation in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Transport to hospital	5000	10000
Extra nourishment	5000	5000
Medical expenses	40000	40000
Bystanders expenses	1700	3400
Pain and suffering, permanent disability & Loss of amenities	15000 67500 5000	300000
Future treatment & cost of artificial limb and crutches	30000, 3000	250000
Loss of marriage prospects		150000
Total		758400

(Rupees Seven lakhs fifty-eight thousand and four hundred only)

The enhanced amount will carry interest at the rate of 9% per annum

from the date of petition till realisation 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. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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