

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

MACA.No. 1778 of 2011 ()

AGAINST THE AWARD IN OPMV 132/2005 of M.A.C.T., THALASSERY

APPELLANT/PETITIONER:

ANOOP P.K., S/O. KUMARAN, AGED 33 YEARS,
BUSINESS, RESIDING AT KONDACHARIYIL VEEDU
P.O CHERUPARAMBA, PANOOR, KANNUR DISTRICT.

BY ADV. SRI.K.P.HAREENDRAN

RESPONDENT/RESPONDENT NO.3:

UNITED INDIA INSURANCE COMPANY LTD.,
DIVISIONAL OFFICE NO.2, DR.SANKARAN ROAD
NAMAKKAL P.O., NAMAKKAL, TAMILNADU-637 001.

R,R3(B/O) BY ADV. SRI.JOHN JOSEPH VETIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A No.1778 of 2011

Dated this the 16th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant in an accident, who is the appellant herein, is aggrieved by the inadequacy of the compensation.

2. The accident occurred on 22.7.2004 while he was travelling by a motor cycle bearing registration No.KL-13 J/2635 from Cheruvanchery to Kannur as a pillion rider. The offending vehicle is a tanker lorry bearing Reg.No.HR 38 F/6162 which hit the motor cycle causing severe injuries to the appellant. He was taken to the A.K.G Memorial Hospital and thereafter he was referred to the Baby Memorial Hospital, Kozhikode where he underwent treatment till 13.08.2004.

3. In the hospital he underwent a major surgery, and skin grafting was also done.

4. The details of the injuries are available from para.9 of the award which we extract below:

1) Crush injury (right) lower abdomen. 2) Crush injury right thigh. 3) Compound fracture lateral cortex of right ilium. 4) Compound fracture on pelvis. 5) Large

subcutaneous umbilical, iliac region and gluteal region.

5. He had produced Exts.A1 to A10 documents in support of the claim.

6. The learned counsel for the appellant submitted that he was a businessman earning Rs.10,000/- per mensem. It is submitted that there is permanent disability of 7% and therefore due compensation has to be granted. It is submitted that inpatient treatment is for 22 days and thereafter he continued the treatment, which fact has been explained by him in proof affidavit. It is also submitted that because of the crush injuries, there is total disfiguration as far as the affected parts of the body are concerned, which also is liable to be compensated. Apart from the same, it is submitted that towards pain and suffering, the Tribunal has not assessed the correct amount.

7. We heard the learned counsel for the Insurance Company who supported the award.

8. The evidence shows that he was dealer in rubber and other hill produces. The Tribunal found that there is no evidence regarding the income. The Tribunal thereafter fixed Rs.3,000/- as the monthly income. The loss towards earning power has not been established. We are of the view that since there is no

evidence regarding the loss of earning power due to the disability which is 7%, the compensation towards loss of amenities, loss of enjoyment of life as well as the compensation for shortened expectation of life, if any have to be calculated based on the disability factors including the adverse effect of the injuries suffered on his abdomen and other parts of the body, instead of granting amount towards 7% permanent disability.

9. As far as bystander's expenses is concerned, the Tribunal has granted only Rs.2,200/- by adopting Rs.100/- per day. The accident was of the year 2004 and therefore we grant an amount of Rs.200/- per day for bystander's expenses and thereby he will be entitled for an amount of Rs.4,400/-.

10. The inpatient treatment is for 22 days. He had undergone surgery and was treated in two hospitals. Because of skin and muscle loss due to the crush injuries various treatment procedures had to be undertaken. It is also clear that he had continued his treatment as an outpatient for some more time going by his oral evidence. According to him, he was laid up for a period of one year. Further version is that he is unable to undertake any hard job or travel in motorcycle.

11. We will be justified in granting an amount of

Rs.40,000/- for pain and suffering in the light of the injuries suffered by him, surgery, skin grafting and other treatment procedures undergone by him as well as the hardships he had suffered during the period of treatment.

12. We also find that the Tribunal granted only Rs.2,000/- for transport to hospital though he was treated in two different hospitals. We grant an amount of Rs.5,000/- towards transportation to hospitals. As loss of earnings, the Tribunal has granted Rs.9,000/- for 3 months. We enhance the same for 6 months and he will be entitled to Rs.18,000/- for the same.

13. The learned counsel for the appellant explained that there is much disfiguration and the major injuries he had suffered are on various parts of the lower abdomen. We grant an amount of Rs.35,000/- towards disfigurement and scars left in the body due to the surgery and other injuries. Another item is regarding loss of amenities of life and enjoyment of life. The disability noted is 7%.

14. It has been explained in the oral evidence that he is undergoing treatment on various counts and various medical expenses have been met already. It is submitted by the learned counsel for the appellant that even though he was married, he

has no issues and he is now undergoing treatment for the same and this was contributed by the accident. Since those aspects have not come up in evidence by documentary evidence, we are not granting any amount towards the same. But we will be justified in granting a reasonable amount towards future medical care and we grant an amount of Rs.10,000/- towards the same. Regarding the loss of amenities and loss of enjoyment of life including the difficulties he has explained in oral evidence either in exerting himself for hard job or in travelling, we award a total amount of Rs.60,000/-. The Tribunal has already granted Rs.57,900/- towards medical expenses.

15. Accordingly, we refix the compensation as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earnings (Rs.3000/- X 6)	Rs. 18,000.00
2	Transport to hospital	Rs. 5,000.00
3	Medical expenses	Rs. 57,900.00
4	Bystander's expenses (Rs.200/- X 22)	Rs. 4,400.00
5	Pain and suffering	Rs. 40,000.00
6	Loss of amenities and loss of enjoyment of life	Rs. 60,000.00
7	Future medical care	Rs. 10,000.00
8	Compensation due to disfiguration	Rs. 35,000.00
	Total	Rs. 2,30,300.00

(Rupees Two lakhs thirty thousand
three hundred only)

16. The appellant will be entitled to a total compensation of Rs.2,30,300/- (Rupees Two lakhs thirty thousand three hundred only). This will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimant can withdraw the amount.

The appeal is allowed accordingly. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.V.ASHA
Judge

rtr/

/true copy/

P.S to Judge