

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 493 of 2010 ()

**AGAINST THE AWARD IN OP(MV) 302/2008 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
OTTAPALAM DATED 29-10-2009**
APPELLANT/PETITIONER:

**BABU,S/O.SOWMINI @ SOWMINI AMMA
NETTATH HOUSE, MAYANNUR POST, THRISSUR DISTRICT
AND NOW RESIDING AT PULAKKAT HOUSE, S R K NAGAR
OTTAPALAM, OTTAPALAM TALUK.**

**BY ADVS.SMT.T.D.RAJALAKSHMI
SRI.R.SREEHARI**

RESPONDENTS/RESPONDENTS:

- 1. MANOJ.P.M, S/O. MANI, PUNNACAL HOUSE
KALLEPADAM DESOM, PAZHAYANNUR,
THRISSUR DISTRICT.**
- 2. K.KRISHNADAS, S/O.JANARDHANAN NAIR,
KIZHAKKETHIL HOUSE, NEDUNGOTTUR, SHORANUR
OTTAPALAM TALUK.**
- 3. THE ORIENTAL INSURANCE CO.LTD.,
PRANAVAM BUILDINGS, MALE PATTAMBI, PATTAMBI
PALAKKAD DISTRICT.**

**R3 BY ADVS. SRI.GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.493 of 2010

Dated this the 1st day of June, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the award passed in O.P.(M.V.) No.302/2008 dated 29.10.2009 on the file of the Motor Accidents Claims Tribunal, Ottapalam. The petitioner is the appellant herein.

2. The case of the appellant is that he sustained injuries in a motor vehicle accident occurred on 15.9.2007 at about 6.35 a.m. at Attur on Chelakkara - Thrissur public road. It is the case of the appellant that while he was travelling in a bus bearing registration No.KL-6/B-3942, the bus capsized as such he sustained injuries.

3. He filed a compensation claim before the Motor Accidents Claims Tribunal alleging negligence on the side of the driver of the bus as the cause of accident. The Tribunal awarded a total compensation Rs.79,100/-. Aggrieved by the same, the above appeal preferred.

4. When the appeal came up for hearing, the counsel for the appellant submitted before us that the amount awarded towards various heads are inadequate. It is the submission that the major portion of the amount awarded is the bill amount i.e. 46,550/-. It is the submission that the appellant sustained fracture on the right humerus and even though a disability certificate was produced showing that the disability is 6%, the Tribunal adopted only 2% for calculating the amount. It is also the submission that he underwent two operations.

5. The appellant was aged 25 years who was allegedly working in Reliance shop at Kunnamkulam. His case is that at the time of accident his salary was Rs.4,920/-. He produced Exts.A12 and A13 to show his salary as above. It is also the case that there was periodical increase in the salary and during 2009 period, his salary was Rs.7,500/-. Ext.A9 is the disability certificate issued by the Orthopaedic Surgeon attached to the Medical College Hospital, Thrissur. As per the said document, there is stiffness of right

shoulder. There is reduction and restriction of abduction as well as internal rotation and the doctor assessed the disability as 6%. After considering the materials before us it is found that it will be only just and proper to consider his income as Rs.4,900/- per month and it is also found that the disability assessed by the doctor can be accepted. Thus the compensation awarded is refixed as follows:

Head of claim	Amount awarded in rupees
Bystander's expenses	300 x 9 2700
Extra nourishment	3000
Transportation expenses	1000
Pain and suffering	25000
Loss of amenities	10000
Loss of income	4900 x 3 ½ 17150
Medical expenses	46550
Permanent disability	4900 x 12 x 17 x 6/100 59976
Total	165376 (Rounded off to Rs.1,65,400/-) Rupees one lakh sixty five thousand four hundred only

Accordingly, the total compensation is fixed as

Rs.1,65,400/- (Rupees one lakh sixty five thousand four hundred only). The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation. There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company.

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

shg/