

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 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

MACA.No. 502 of 2010 (S)

AGAINST THE AWARD IN OPMV 860/2009 of MACT, IRINJALAKUDA DATED 22-10-
2009

APPELLANT(S)/PETITIONER:

SURESH, S/O. LATE KUZHIKKATTUSSERY
VELAYUDHAN, KOLKUNNU DESOM AND P.O
VADAKKUMBHAGOM VILLAGE, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENT(S):RESPONDENTS

1. THE MANAGING DIRECTOR,
KERALA STATE ROAD TRANSPORT CORPORATION, FORT
THIRUVANANTHAPURAM.

2. NARAYANAN NAIR, S/O. MELEVAVAT APPU
NAIR, POOLAKKOTTU.P.O, CHATHAMANGALAM VILLAGE
KOZHIKODE DISTRICT.

R1 BY ADV. SRI.JOY GEORGE, SC, K.S.R.T.C.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.502 of 2010

Dated this the 9th day of July, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV) No.860/2006 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda. The challenge is against the quantum of compensation awarded by the Tribunal. The facts is as follows:

2. The appellant was a pillion rider on a motor cycle bearing Reg. No.KL-8/T 6538. A KSRTC Bus bearing Reg. No.KL-15/5105 hit against the said motor cycle. Accident occurred on 13.9.2005. In that accident, the appellant sustained severe injuries. An application moved before the Tribunal. Tribunal awarded a total compensation of Rs.55,200/-.

3. Heard.

4. The learned counsel for the appellant submitted before us that the appellant was treated at St. James Hospital, Chalakudy as inpatient.

There was fracture D12 and L1 as well as fractures to ribs 5 to 9 on the right side. He was in the hospital for 21 days at a stretch and there was reviews upto 2006. The age of the appellant was 40 years and he was having an income of Rs.7,500/- per month from his occupation. It is the submission that even though Ext.A6, the licence obtained from the Panchayat was produced, the Tribunal not considered the same. It is also the submission of the learned counsel for the appellant that a disability certificate showing that he was having 22% disability is produced before the Tribunal as Ext.A8, no amount awarded on this count. Under such circumstances, an application was moved, pending this appeal before this Court and the disability was assessed by a Medical Board constituted at the Medical College Hospital, Thrissur. The disability was assessed by the said Board and the certificate will show that he is actually having a disability at 24%. It is the submission before us that being an assessment by a Medical Board, the said assessment can be accepted. The appellant is conducting an electronic equipment service shop. Ext.A6 is the licence of the same. It

is also submitted that a minimum amount of Rs.7,500/- has to be considered as monthly income for the purpose of assessment, as the accident occurred in the year 2005. It is also the submission that the compensation awarded on various heads are also inadequate and a refixation of just compensation is warranted in this case. It is also submitted that the disability certificate now produced before this Court, is to be marked in this proceedings.

5. The disability certificate is marked as Ext.A10. In this case, there are materials to show that that the appellant was working as an Electronics Service Technician. The accident occurred in the year 2005. Considering the period in which the accident occurred and the fact that the appellant was working as an Electronics Service Technician, we feel that it will be only just and proper to consider an income of Rs.5,000/- per month for the purpose of assessment of loss of income due to disability. This is a case where fracture sustained to D12 and L1 of the spine. There is also fracture to five numbers of ribs on the right side. He was in the hospital for 21 days. The

compensation awarded on the counts of pain and suffering and loss of amenities, etc. are on a lower level.

Thus, considering all the aspects, the total compensation is refixed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Bystander's expenses	21000	5250 (21 x 250)
Extra nourishment		3500
Transport to hospital	750	2000
Medical expenses	12350	12350
Pain and suffering	20000	35000
Loss of amenities	10000	35000
Loss of earnings	10000	20000
Permanent disability	55200	216000 (5000 x 12 x 15 x 24/100)
Total		329100

(Rupees Three Lakhs twenty-nine thousand and one hundred only)

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition and the first respondent K.S.R.T.C. shall deposit the amount within a period of five months from the date of receipt of a copy of this judgment. The appellant shall remit the court fee required for the amount awarded over and above the claim,

since we fixed just compensation. The appellant is entitled for release of the amount on deposit.

The appeal is allowed as above. The parties shall suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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