

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA**

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

MACA.No. 1113 of 2014

**AGAINST THE AWARD IN OP(MV) 1128/2007 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, PERUMBAVOOR**

APPELLANT/PETITIONER:

**JOHNY, AGED 47 YEARS
S/O. PAULOSE, KATHANADAN HOUSE, PULIYANAM P.O.
PULIYANAM KARA, PARAKADAVU VILLAGE.**

**BY ADVS.SRI.ELSON SIMON
SRI.PRAMOD KOCHUTHOMMEN.E.**

RESPONDENTS/RESPONDENTS:

- * 1. NIBU
S/O. VARGHESE, ATHRASSERY HOUSE, PARA BHAGOM
KURUPPAMPADY KARA, RAYAMANGALAM VILLAGE-683545. (DELETED)**
 - * 2. VIJAYA KUMAR P.M.
PUTHIYEDATHU HOUSE, KURICHILAKODE, KODANADU P.O.
ERNAKULAM-683544. (DELETED).**
 - 3. M/S. ORIENTAL INSURANCE CO.LTD.
BRANCH OFFICE-II, JEWEL ARCADE, LALYAM ROAD
KOCHI-682011.**
 - * RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE APPELLANT, VIDE ORDER DTD.12/2/15 IN IA.386/15 IN
MACA.1113/2014**
- R3 BY ADV. DR.ELIZABETH VARKEY
SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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

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M.A.C.A No.1113 of 2014

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Dated this the 5th day of March, 2015

JUDGMENT

Asha, J

The appellant met with an accident on 15.03.2007 while he was riding on a motor cycle on being hit by a bus. He sustained very severe injuries and was taken to Little Flower Hospital, Angamaly and thereafter to Medical Trust Hospital, Ernakulam. He sustained the following injuries.

1. Lacerated wound 30 cm long from right angle lateral extending to the leg exposing knee joint and muscles.
2. Contusion right shoulder and dislocation of right hip.
3. Contused abrasion on the chest and extremities.
4. Lacerated wound on the right leg 20 x 10 cms L shaped.
5. Pain and tenderness on right leg.
6. Abrasion right shoulder.
7. Laceration over distal phalanx.

He was discharged from hospital on 04.04.2007.

2. Claim petition was filed seeking compensation of Rs.3,37,000/-, which was limited to Rs.2,50,000/-. The Tribunal awarded a sum of Rs.91,018/-. This appeal is filed seeking enhancement of compensation. The learned counsel for the appellant submitted that the amount awarded under various heads of compensation are thoroughly inadequate.

3. The learned counsel for the insurance company opposed the claim for enhancement.

4. It is seen that the appellant underwent inpatient treatment for a period of 21 days. The nature of the injuries shows that he had been unable to undertake any work at least for a period of four months. The Tribunal awarded compensation under the head of loss of earning for a period of three months, fixing his income at the rate of Rs.3,500/-. The appellant claimed that he was working as a Gardner earning monthly income of Rs.4,500/-. Having regard to the wage structure prevailing at the relevant time of accident, we are of the view that the monthly income can be fixed as Rs.4,000/-. Therefore, he will be entitled to get an amount of Rs.16,000/- for a period of four months under the head of compensation for loss of earnings. The Tribunal has awarded a sum of Rs.3,150/- towards attendant charges for 21

days. Reckoning the charges at the rate of Rs.250/- per day, the same is enhanced as Rs.5,250/-. Having regard to the nature of injuries and the period of treatment, especially the dislocation occurred to his hip and the discomfort and inconvenience suffered by him for a very long time, we award a sum of Rs.40,000/- towards pain and suffering in the place of Rs.30,000/- awarded by the Tribunal. It is seen that the appellant has incurred disfiguration, apart from a deep scar on account of the lacerated wound. We, therefore, award a compensation of Rs.12,000/- towards it. The Tribunal has awarded a sum of Rs 1,000/- towards the transportation charges. It is seen that the appellant has undergone treatment for a long period as inpatient as well as outpatient in different hospitals and had to undertake several visits. Therefore, we enhance the same to Rs.2,000/-. Award passed by the Tribunal is accordingly modified as follows:

<i>Sl..No.</i>	<i>Head of claim compensation for</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Amount refixed in this Court (in Rupees)</i>
1	Loss of earning	10500	16000
2	Transport to Hospital	1000	2000
3	Extra nourishment	2250	2250
4	Damage to clothes	500	500
5	Attendance expenses	3150	5250
6	Medical expenses	25618	25618

<i>Sl.No.</i>	<i>Head of claim compensation for</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Amount refixed in this Court (in Rupees)</i>
7	Loss of amenities etc.	18000	18000
9	Pain&suffering	30000	40000
10	Disfigurement	NIL	12000
	Total	Rs.97,018/-	Rs.1,21,618/-

5. Thus the appellant will be entitled to get total compensation of a sum of Rs.1,21,618/-. The award passed by the Tribunal is accordingly modified. The enhanced amount will carry interest at 9% per annum from the date of claim petition. Insurance company is directed to deposit the amount within a period of three months.

The appeal is accordingly allowed. The parties shall suffer their respective cost.

Sd/-
T.R.RAMACHANDRAN NAIR (JUDGE)

Sd/-
P.V.ASHA (JUDGE)

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