

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

MACA.No. 1830 of 2011 ()

AGAINST THE AWARD IN OPMV 1295/2005 of M.A.C.T., THALASSERY DATED 08-04-2011

APPELLANT(S)/PETITIONER:

VIJAYAN.M., AGED 45 YEARS,
S/O. KUNHAMBU, VIJAY NIVAS, NEAR PUTHIYAMKAVU
TEMPLE, KARAMEL, P.O.ANNUR
(VIA) PAYYANNUR.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/RESPONDENT NO.3:

NATIONAL INSURANCE CO.LTD., DIVISIONAL
OFFICE, KANNUR-670001.

R,R BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1830 of 2011

Dated this the 11th day of February, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 20.8.2005 when the bike which he was riding, collided with an autorickshaw. He was immediately taken to St. Martin De Porres Hospital, Cherukunnu. He sustained fracture of clavicle and fracture of 1st rib right and loss of teeth.

2. A claim petition was filed seeking compensation to the tune of Rs.1,50,000/-. The Tribunal awarded a sum of Rs.51,000/-. This appeal is filed seeking enhancement of compensation. Apart from that, the Tribunal also found contributory negligence to the extent of 20% on the appellant and reduced the compensation to that extent. This part of the direction and deduction in compensation is also under challenge in this appeal.

3. We heard learned counsel appearing on either side. The

learned counsel for the insurance company vehemently opposed the claim for enhancement.

4. Learned counsel for the appellant pointed out that there was no evidence to come to the conclusion that the appellant was in any way negligent and the accident occurred on account of the same. As contended by the learned counsel for the appellant, we find that there is nothing on record to attribute negligence on the part of the appellant. The Tribunal, in para 7 of the award, has stated that the accident was occurred due to the sole negligence of the petitioner/appellant. It is further stated that it is clear from the averments in the petition that the appellant was riding the motor cycle and entered into the main road from a pocket road without proper caution and without following the traffic rules. Therefore, the Tribunal came to the conclusion that there is likelihood of contribution of negligence from the side of the appellant, rather than the major contribution by the first respondent. Without anything on record to prove the negligence, the Tribunal has attributed 20% negligence on the part of the appellant. We do not find

any justification for the said reasoning and hence we vacate the finding to that extent.

4. Learned counsel for the appellant pointed out that the amounts of compensation awarded under various heads are thoroughly inadequate. The appellant was working as a Police Constable. On the strength of Ext.A5 series medical prescriptions and Ext.A6 series medical certificates, the appellant claimed that a sum of Rs.75,000/- was incurred for three implants, since he had lost two incisors. The Tribunal found that the amount claimed was unreasonable and awarded a sum of Rs.15,400/- towards medical expenses, on the strength of Ext.A9 series. The appellant was hospitalised for a period of six days from 20.8.2005. On account of the injuries he had to avail leave for a period of 45 days from 20.8.2005 to 3.10.2005. He had claimed loss of earnings for the above period. The Tribunal awarded a sum of Rs.6,000/-, even though he had produced certificate to show that he had to avail leave for a period of 45 days. The Tribunal awarded loss of earnings for a period of one month only. Having regard to the fact that

the appellant had already availed leave on loss of pay/earned leave for a period of 45 days and he could have availed the same for any other purpose, but for the accident, we are of the view that salary for the entire period of 45 days can be awarded. Therefore, this will come to Rs.8,400/-. Similarly, the appellant has lost three teeth which required implant. Though we consider the amount claimed by the appellant (i.e. Rs.75,000/-) at the rate of Rs.25,000/- as exorbitant, a sum of Rs.45,000/- will be reasonable towards the same. Hence, we award the same in addition to the sum of Rs.15,400/- already awarded by the Tribunal towards medical expenses. The Tribunal has awarded a sum of Rs.600/- alone for bystander's expenses for a period of six days, at the rate of Rs.100/- per day, which we enhance to Rs.1,200/- reckoning the same at the rate of Rs.200/- per day. The Tribunal has awarded a sum of Rs.18,000/- towards pain and suffering considering the fracture of clavicle. We find that the appellant has suffered fracture of clavicle and 1st rib right and also lost three teeth. Apart from that, he had to avail leave for 45 days. Considering the pain and agony which he

would have suffered and experienced during this period, we enhance the compensation for pain and suffering to Rs.30,000/-.

We therefore, modify the award accordingly and the total compensation will be as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Loss of earnings	6000	8400
Medical & miscellaneous expenses	15400	15400 +45000
Bystander expenses	600	1200
Transportation expenses	1000	1000
Extra nourishment	2000	2000
Pain and suffering	18000	30000
Loss of amenities & convenience	6000	6000
Any other heads (review treatment)	2000	2000
Total	51000	111000

(Rupees One Lakh Eleven thousand only)

The appellant will be entitled to the entire amount of compensation without any deduction and the enhanced amount will carry interest at the rate of 9% per annum from the date of petition. 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 respective parties will bear their costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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