

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 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

MACA.No. 894 of 2009 ()

AGAINST THE AWARD IN OPMV 710/2003 of M.A.C.T., KOZHIKODE DATED 04-11-2008
APPELLANT(S)/PETITIONER IN OP(MV) :

ABDUL RAHEEM A.C.
RESIDING AT POKKALATH HOUSE, P.O.CHELAVOOR, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S)/RESPONDENTS IN OP(MV) :

1. MOHAMMED KUTTY AND OTHERS
RESIDING AT KANALAD HOUSE, P.O.ADIVARAM, PUTHUPPADI
KOZHIKODE. (DELETED)

2. V.V.JAFFER, S/O. KUNJUMOHAMMED,
RESIDING AT VAIKATH VALAPPIL HOUSE, P.O.POZHUTHANA
WAYANAD. (DELETED)

3. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, VELIMANNA BUILDING, MAIN ROAD
THAMARASSERY.

(R1 & R2 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 922/2015
DT.11.3.2015)

R3 BY ADV. SRI.P.V.JYOTHI PRASAD
R3 BY ADV.P.V.JYOTHIPRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.894 of 2009

Dated this the 21st day of May, 2015

JUDGMENT

Ramachandran Nair, J.

In this appeal filed by the claimant, the prayer is to grant enhanced compensation from the one granted by the Tribunal. The appellant had claimed a total compensation of Rs.2 Lakhs and the Tribunal has awarded only a sum of Rs.16,500/-.

2. We heard learned learned counsel for the claimant and learned counsel for the insurance company.

The appellant had sustained the following injuries:

“(1) Diffuse brain, (2) Haemosinus – frontal, sphenoid, (L) maxillary sizer, (3) Communited fracture frontal bone-walls of frontal sinus, (4) Tenderness (L) shoulder; and (5) Injuries (L) & ® eyelid.”

The Tribunal, even though has considered various aspects, did not accept the case of the appellant in full either with regard to the injuries

sustained or with regard to the alleged disability. It is seen that in spite of production of Ext.A4 medical bills totalling Rs.22,897/-, only Rs.3,000/- is granted for the reason of non production of prescriptions for purchase of medicines.

3. The Medical Board had certified 5% disability and for assessing the permanent disability sustained a notional income is taken as Rs.1,500/- which is also under attack. But no amount has been granted towards permanent disability and the Tribunal rejected the case that head ache is a permanent disability.

4. Learned counsel for the insurance company submitted that the evidence has been appreciated correctly and the quantum arrived at is perfectly justified.

5. The period of treatment is from 16.8.2002 to 6.9.2002, viz. for 21 days. The appellant had sustained head injury including fracture on frontal bone which is clear from the reference card. The Tribunal has reckoned the period of hospitalisation only as 7 days, but we find from

the reference card which was made available by the learned counsel for the appellant that initially the appellant was admitted on 17.8.2002 and discharged on 24.8.2002 and he was again admitted on that day itself and the date of discharge is shown as 6.9.2002. The injuries noted include laceration 4 x 2 cm on the upper lip, tenderness in left shoulder, swelling in frontal region in the middle, etc. etc.

6. After hearing both sides, we are of the view that the compensation fixed by the Tribunal requires enhancement. Since the inpatient treatment is for 21 days, we adopt an amount of Rs.150/- per day for the purpose of calculating bystander's expenses, totalling Rs.3,150/-. Towards extra nourishment we grant an amount of Rs.3,000/-. The Tribunal has granted Rs.1,000/- as incidental charges, but for transportation charges only a sum of Rs.500/- has been granted. We combine the two heads together and award a sum of Rs.3,000/- towards transportation charges. As far as medical expenses are concerned, what is granted by the Tribunal is only Rs.3,000/-, but the

medical bills show an amount of Rs.22,897/- and we grant the said amount in full. We do not accept the view taken by the Tribunal that prescriptions also should have been produced.

7. For pain and suffering, the Tribunal has granted only a sum of Rs.5,000/-. Evidence is also to the effect that the appellant has lost one tooth. After considering various aspects, we grant an amount of Rs.20,000/- for pain and suffering. As far as loss of tooth is concerned, the Tribunal has awarded only a sum of Rs.2,000/- which we enhance to Rs.5,000/-. The Tribunal granted Rs.3,000/- towards loss of income taking two months period for treatment and recouping. The income fixed at Rs.1,500/- is too low, as rightly pointed out by the learned counsel for the appellant and we fix the same at Rs.3,500/-. Therefore, towards loss of income for two months, we grant an amount of Rs.7,000/-. As regards loss of amenities what is granted by the Tribunal is only Rs.2,000/-. It is clear that he had sustained injuries to the head and the Medical Board had certified 5% disability. We are of

the view that towards loss of enjoyment and amenities in life a reasonable amount ought to have been awarded which we fix at Rs.10,000/-.

Therefore, the total compensation is recomputed in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Medical expenses	3000	22897
Incidental charges + transportation expenses	1000 + 500	3000
Pain and suffering	5000	20000
Loss of amenities and enjoyment in life	2000	10000
Loss of tooth	2000	5000
Loss of income	3000	7000
Bystander's expenses		3150
Extra nourishment		3000
Total	16500	74047

(Rupees Seventy-four thousand and forty-seven only which is rounded off to Rs.74,050/- (Rupees Seventy-four thousand and fifty only))

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited, within a period of three months.

The appeal is allowed above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

kav/