IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

MACA.No. 1853 of 2011 ( )

AGAINST THE AWARD IN OP(MV) 252/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM DATED 03-08-2011

APPELLANT/PETITIONER:

GANESH KUMAR @ GANESH
S/O.SANKARANKUTTY, AGED 26 YEARS, KAILAS
MUNNARKODE, THRUVZHIYODE (VIA), OTTAPALAM TALUK

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT/RESPONDENT NO.3:

UNITED INDIA INSURANCE CO.LTD.
THRISSUR BRANCH, SIMI COMPLEX, KURUPPAM ROAD
THRISSUR

R2(B/O) BY ADVS. SRI.JOHN JOSEPH VETTIKAD
BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19-08-2015, ALONG WITH MACA. 908/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

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M.A.C.A.Nos.1853/2011 & 908/2012

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Dated this the 19th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

Both these appeals arise from the same award of the Motor Accidents Clams Tribunal, Ottapalam in O.P.(M.V.) No.252/2007. M.A.C.A.1853/2011 is filed by the claimant and MACA 908/2012 is filed by the Insurance Company.

2. We heard learned counsel for the appellant Sri. Jacob Sebastian and Smt. Preethy R. Nair and learned Senior Counsel for the Insurance Company Sri. Mathews Jacob.

3. The accident in this case happened on 5.5.2006 at 12.30 p.m. near Kerala Varma College bus stop, Thrissur. The claimant was riding on his motorcycle bearing registration No.KL 9J 482 from his residence to Thrissur.

He was travelling in connection with his job as a Medical Representative (Brand Executive). The offending vehicle was a jeep bearing registration No.KL 8X 8642 driven by the second respondent before the Tribunal. Due to the hit against the motorcycle the appellant sustained very serious injuries and he claimed a total amount of Rs.50 lakhs as compensation. The Tribunal below has granted total amount of Rs.23,01,025/-; out of which, Rs.15,87,525/- represent the medical expenses.

4. Learned counsel for the appellant submitted that the Tribunal has committed major faults with regard to the assessment of compensation, by fixing a reduced amount as salary in spite of positive evidence, documentary and oral to support the claim raised by the appellant. It is submitted that he was appointed as per Ext.A14 appointment letter. The District Manager of the Company was examined as PW4. It is submitted that Ext.A14 will show that he was offered a total amount of Rs.14,700/- per month and the appointment letter is dated 4.5.2005. Apart from the said

amount he was entitled for daily allowance at the rate provided in the appointment letter. He was also eligible for incentive of 5% of total sales and the benefits like provident fund, gratuity and bonus. It is submitted that the evidence of PW4 will show that the appellant would have been getting a further amount of Rs.7,000/- to Rs.8,000/- per month. But the Tribunal by ignoring all these items of evidence fixed a notional amount of Rs.10,000/- as emoluments per month which cannot be justified. It is submitted that the injuries sustained by the appellant are mainly fracture tooth, fracture nasal bone and fracture C4, C5 and C6, abrasions, lacerations etc. He was treated as inpatient for a total period of 783 days in different hospitals. The hospitals wherein he was treated include EMS Hospital, Perintalmanna, Indo-American Hospital, Vaikom, Life Care Clinic, Ernakulam, Lakshmi Hospital, Ernakulam as well as Sunrise Hospital, Ernakulam. It is submitted that the condition of the appellant will show that he is a quadriplegia patient and is completely laid up, unable to move himself.

In such a situation, he is depending upon two bystanders which arrangement has to be continued for the entire life period. The same has resulted in causing innumerable health problems to him which require continuous and constant medical examination. It is submitted that these aspects were not properly assessed by the Tribunal and only meagre amounts have been granted under various heads including bystander's expenses, pain and suffering, loss of amenities and conveniences, transportation expenses etc. It is also submitted that the appellant has produced additional bills before this Court as Annexure A2. Another important submission made by the learned counsel is that the Tribunal discarded the disability certificate issued by the doctor who treated him which showed that he had assessed the permanent disability as 90%. But the same has been drastically reduced to 20% after discarding his certificate. It is submitted that being a person with spinal cord injury where the appellant is unable to move about and do any normal duties in his life and also engage himself in any profitable employment the functional disability will have to be reckoned as 100% itself.

5. Learned counsel further invited our attention to the certificate issued by the Medical Board which has been produced along with the additional documents before this Court along with I.A. 2928/2015. It is issued by the Medical Board attached to the District Hospital, Palakkad and the permanent physical disability is assessed as 75%. We mark the certificate as Ext.A25.

6. Learned counsel therefore submitted that a due provision will have to be made for various items including bystander's expenses which are continuing, pain and suffering as well as a reasonable amount for future treatment. Particular reference is made to the decision of the Apex Court in **Sanjay Verma v. Haryana Roadways [2014 ACJ 692]** to contend that in a like case where due to fracture of spinal cord resulting in paralysis of the whole body of an injured aged only 25 the Apex Court has enhanced the amount of compensation by providing

Rs.3 lakhs for future treatment, bystander's expenses Rs.2 lakhs and pain and suffering and mental agony Rs.3 lakhs.

7. Learned Senior Counsel for the Insurance Company Sri. Mathews Jacob submitted that the fixation of monthly income at Rs.10,000/- cannot be faulted, since the appellant/claimant did not produce any confirmation letter before the Tribunal. Ext.A14 shows that he was on probation and the oral evidence of PW4 could not therefore improve the case of the claimant. It is submitted that the appellant could have produced the pay slips showing the receipt of monthly salary. In the absence of any documentary evidence, learned Senior Counsel submitted that the assessment of allowances or incentives at Rs.7,000/- to 8,000/- as deposed by the witness PW4 cannot be accepted. Therefore, it is submitted that the claimant's case for enhancement of the monthly income cannot be supported. It is also submitted that the Tribunal has assessed a reasonable amount towards compensation under

various heads, in the appeal filed by the Insurance Company the main challenge is regarding the monthly income fixed.

8. We have considered the rival submissions.

9. The situation of the appellant can be gauged from the series of medical certificates and discharge summaries produced by the appellant which have been marked as Ext.A8 series. It appears that he was treated in different hospitals. The certificates show that he had been treated during different spells which details have been recorded in the award of the Tribunal in paragraph 7 itself. The details with regard to the injuries and the fractures suffered have been recorded in each of the certificates. From the certificate issued by the Brain and Spine Centre, Vaikom for the period 10.5.2006 to 14.7.2006, it can be seen that it was a case of fracture of C5 and C6 with cord changes. The situation of the patient is also clear from the same. He had undergone different treatment procedures. He was advised to have physio and occupational therapy at home for any improvement of his health. The similar details are available

from the series of certificates. We will also refer to the discharge summary issued from the Sunrise Hospital, Palarivattom wherein he was admitted on 23.2.2010 and discharged on 10.3.2010. The final diagnosis is recorded as "paraplegia with level of sensory loss T10". Under the column history and physical findings it is stated that it is a case of post traumatic quadriparesis (fracture cervical spine) in 2006. Partial recovery of upper limb muscles. The advise on discharge is to avoid supine position continuously for more than 10 minutes. It is also recorded as against the column hospital courses that the patient had an uneventful recovery. Therefore, it will be safe to conclude that the appellant/claimant is totally paralysed. The certificates also will evidence that he has been undergone treatment for rehabilitation in the Life Care Clinic, Ernakulam. Of course he is undergoing physiotherapy as well as occupational therapy.

10. The situation of the appellant/claimant therefore will definitely lead to the conclusion that he is totally

paralysed and cannot perform any normal duties by himself and he will have to depend upon for his daily needs others and he cannot indulge himself in any physical activities. That resulted in 100% disability.

11. The argument on both sides with regard to the monthly salary, will have to be considered with regard to the documentary evidence Ext.A14, which is the appointment letter. There the total salary per month recorded is Rs.14,700/-. The company namely Emcure Pharmaceuticals Limited has appointed him as a Brad Executive to be based at Thrissur with effect from 4.5.2005. Of course, the period of probation is shown as six months and the appellant did not produce any confirmation letter. The evidence of PW4 will show that even as on the date of accident he was continuing in their service. Of course, his evidence as regards the additional allowances which were being received by the appellant is not supported by any documentary evidence. Going by the appointment letter itself he is entitled for a daily allowance on three counts;

head quarter Rs.120/-, Ex-headquarter Rs.130/-, Out-station Rs.250/-. He will also be entitled for incentives of 5% for the total sales. But the data to support the incentive is not available before us.

12. After having considered the arguments on both sides, according to us, the monthly income can be reasonably fixed at Rs.14,000/-. We have not considered the various aspects which may result in future increase of salary since it is a personal injury case, even though the learned counsel submitted that the in the decision in **Sanjay Verma**'s case (cited supra) considered that element also.

13. The claimant was aged 26 at the time of the accident and therefore the multiplier gong by the judgment in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)** will be 17. For the purpose of assessment of compensation towards loss of earning power and permanent disability, we are taking the functional disability as 100% itself. The situation of the appellant requires the help of a constant bystander at least. The

appellant has examined PWs 1 & 2 who are stated to be the bystanders helping him even from the first day he was in the hospital. Series of vouchers have been produced to support the claim for adequate amount. They have been marked as Ext.A1. But the Tribunal did not accept the same since it was felt that they have not been issued in an orderly manner.

14. The accident occurred in the year 2006. Therefore, for the period of hospitalisation a reasonable amount can be granted towards bystander's expenses, which we fix at Rs.200/- per day and we grant an amount of Rs.1,50,000/- on the said account for 783 days.

15. The next aspect is regarding the transportation expenses where that total claim was Rs.50,000/- and what is granted by the Tribunal is Rs.20,000/-. The learned counsel invited our attention to Exts.A12, A18 and A23 trip sheets and the total amount going by the same will approximately come to Rs.77,000/-. The Tribunal has fixed the same at Rs.20,000/- and we fix the same at Rs.30,000/-. As far as

pain and suffering is concerned, what is granted by the Tribunal is only Rs.25,000/-. The appellant had suffered very serious injuries, had been under continuous treatment and the same situation is continuing even now. Therefore, we fix an amount of Rs.1 lakh towards pain and suffering, which will be reasonable. As far as expenses for bystander's through out his life is concerned, we are justified in granting an amount of Rs.2 lakhs. The same is granted at the light of the fact that he is unable to do his normal avocation including answering of any calls of nature, taking food and other activities. As far as loss of amenities and enjoyment in life is concerned, the injuries have resulted in denying the entire pleasures of life to him. He will not be able to move about from the bed and the situation shows that he is confined to bed through out. We fix a reasonable amount of Rs.2 lakhs towards loss of amenities and loss of enjoyment in life. For future treatment also we provide an amount of Rs.1 lakh because he has to undergo physiotherapy treatment as well as treatment for bedsore and other health problems. As far as amount towards permanent disability is concerned, the same will have to be calculated by adopting the multiplier of 17 and by fixing an amount of Rs.14,000/- as salary per month.

16. We therefore, re-fix the compensation in the following manner:

Head of Claim	Amount re-fixed by this Court in Rs.
Loss of earning	14000 x 12 1,68,000
Medical expenses	15,87,525
Future treatment	1,00,000
Bystander's expenses	783x200 Rounded off to 1,50,000
Bystander's expenses continuing	2,00,000
Transportation	30,000
Pain and suffering	1,00,000
Loss of amenities and enjoyment	2,00,000
Permanent disability	28,56,000
Total	**53,91,525** **Rounded off to: 53,90,000** **(Rupees fifty three lakhs ninety thousand only)**

17. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation except for the amounts granted for future

treatment and bystander's expenses granted (Rs.2 lakhs). For those two items interest is liable to be paid from the date of award of the Tribunal namely 3.8.2011.

18. The Insurance Company has been found liable by the Tribunal to satisfy the award, which we confirm. Out of the total enhanced compensation granted by this court, 50% of the same will be deposited in a nationalised bank for a period of five years and we permit the appellant to withdraw the balance amount along with its interest. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. The appellant will have to pay court fee for the amount awarded by this Court over and above the claim which will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

19. We also permit the appellant to withdraw the interest on the deposit made in the nationalized bank on a quarterly basis.

M.A.C.A.1853/2011 is thus allowed and M.A.C.A. 908/2012 is dismissed.

There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/