

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

MACA.No. 1857 of 2011 ()

AGAINST THE AWARD IN OPMV 318/2007 of M.A.C.T.,KOTTAYAM DATED
18-06-2011

APPELLANT/PETITIONER:

BABY THOMAS @ BABY
VAZHAVILA THEKKETHIL(H) , ARUNOOTTIMANGALAM KARA
THEKKEKARA, VETTIYAR VILLAGE, MAVELIKARA.

BY ADV. SRI.K.A.HASHIM

RESPONDENTS/RESPONDENTS

1. MATHEW
PULIMOOTTIL(H) , NEW GOVT.L.P.SCHOOL, BHARANIKAVU P.O.
MAVELIKARA.690541

2. THE ORIENTAL INSURANCE CO.LTD.
KAYAMKULAM.690502

R,R2 BY ADV. SRI.TITUS MANI
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1857 OF 2011

Dated this the 20th day of March, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 13.8.2005. He was travelling in a car which hit on a lorry parked by the side of the road causing injuries to him. He was admitted in the Medical College Hospital, Kottayam.

2. The claim petition was filed seeking compensation for a sum of ₹2,03,500/-. The Tribunal awarded a sum of ₹94,95/-. The appellant had produced the disability certificate in which the disability was assessed at 34%. But the Tribunal assessed it as 15% and a sum of ₹43,200/- was granted towards compensation under the head of disability.

3. The learned counsel for the appellant submits that there was no reason for reducing the percentage of disability.

4. We heard the learned counsel for the Insurance Company also, who opposed the claim for enhancement.

5. The injuries sustained by the appellant are lacerated wound 3 x 1 x 5 cm. Left cheek, fracture left patella inferior pole and fracture of the posterior column of the left acetabulum with mild posterior lateral fracture bone fragment.

6. The appellant underwent inpatient treatment for a period of 11 days i.e. in the Medical College Hospital, Kottayam and thereafter in VSM Hospital, Thattrambalam. His disability was assessed by the standing Medical Board attached to the Medical College Hospital, Kottayam. After referring to the injuries sustained by him, his disability has been found to be permanent - 34% under mild category.

7. The appellant is stated to be engaged in private employment after retirement from the Kerala State Electricity Board as Engineer. The Tribunal reckoned his income as ₹3,000/-. The Tribunal has arrived at the disability compensation reckoning only 15% disability. The reason stated by the Tribunal is that it does not affect his earning capacity and there is only restriction in the enjoyment of life. In the light of the judgment of the Apex Court in **Suresh K. v. New India Assurance Company & others (2012 ACJ 2694 (SC) = 2012 KHC 4632)** and subsequent judgments, there is no reason for

denying compensation based on actual percentage of disability, on the ground that the injured has already retired from service or it does not affect his avocation. The appellant had already suffered injuries and he has to be compensated for the same. Therefore the disability already assessed by the Medical Board has to be taken and the multiplier method adopted for arriving at the compensation under the head of permanent disability. The Tribunal has reckoned the multiplier only as 8. As per the judgment of the Apex Court in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, the proper multiplier to be adopted in the case of persons aged 55 is 11. We therefore recompute the compensation under this head as ₹ 1,34,640/- ($3000 \times 12 \times 11 \times 34\%$).

8. Under the head of pain and suffering, the Tribunal has awarded only a sum of ₹16,000/-. In view of the nature of the injuries sustained by the appellant as explained above, we enhance the same to ₹25,000/-. The disability occurred to him seriously affects the enjoyment of normal amenities of life subsequent to the accident. Therefore, we enhance the compensation under the head of loss of amenities to ₹20,000/-.

9. Accordingly, the award passed by the Tribunal is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transportation	1500
Extra nourishment	1000
Damage to clothings	500
Bystander expenses	2200
Medical expenses	7995
Loss of earnings	12000
Pain and suffering	25000
Loss of amenities	20000
Permanent disability	134640
Total	204835 (Rupees two lakhs four thousand eight hundred thirty five only)

10. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

P.V.ASHA, JUDGE