

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. 1873 of 2011 ()

AGAINST THE AWARD IN OPMV 2251/2004 of MACT,TRIVANDRUM DATED
15-12-2010

APPELLANT:

SALIM DASTHAGEER
S/O.P.M.SALIM, RESIDING AT TC.NO.49/3346(2)
PRA NO.181, KAMALESWARAM, MANACAUD P.O.
THIRUVANANTHAPURAM.

BY ADV. SRI.J.HARIKUMAR

RESPONDENTS:

1. A.ABDUL KHALAM
S/O.ABDUL JABBAR, CHENNUPARA PUTHEN VEEDU, THALAVILA
P.C.MUKKU P.O., KALLAMBALAM
THIRUVANANTHAPURAM DISTRICT-695 505.

2. M.SHAHABUDEEN
S/O.MAITHEENKANNU, C/O.ABDUL KHALAM
THALAVILA, P.C.MUKKU P.O., KALLAMBALAM
THIRUVANANTHAPURAM DISTRICT-695 505.

3. M/s.THE ORIENTAL INSURANCE COMPANY LTD
DIVISIONAL OFFICE NO.1, THAKARAPARAMBU JUNCTION
PAZHAVANGADI, THIRUVANANTHAPURAM DISTRICT-695 013.

R3 BY ADV. SRI.P.JAYASANKAR

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.1873 OF 2011

Dated this the 20th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The learned counsel for the appellant raised two contentions. One is regarding reduction of percentage of disability from 11% to 5% by the Tribunal and the other one being the grievance regarding the amount awarded towards pain and suffering only at ₹15,000/-. The accident occurred on 20.09.2004 while the appellant was riding the motor cycle bearing Reg.No.KL-01/S-3729. Before the Tribunal, various records have been produced as Exts.A1 to A20 including police records. The accident and the negligence found against the driver are not disputed.

2. The injuries sustained by the petitioner include fracture of right wrist and lacerated wound on the dorsum of foot, contusion of right shoulder and left knee. He was admitted in the S.P.Fort Hospital, Thiruvananthapuram on 21.09.2004 and discharged on 23.09.2004. It

is stated that he had to continue outpatient treatment for some time. Open reduction and internal fixation with volar buttress plate and screws were done on 22.09.2004.

3. We have gone through the disability certificate issued by the Assistant Professor of Orthopaedics, Medical College Hospital, Thiruvananthapuram. The details therein are given below :

The fracture of lower end of right wrist has united with partial ankylosis of right wrist and implant in situ.

Dorsiflexion and plantar flexion of right wrist limited by 10 degree each.

There is instability of metacarpophalangeal joint of right thumb with chronic ulnar collateral ligament injury.

Tenderness and swelling present over MCP joint of thumb.

He has difficulty in grasping and pinching objects.

Wasting of 1 cm. of right forearm muscles.

Difficulty in writing

Difficulty in getting up from floor using hand support.

Difficulty in riding vehicle

Difficulty in carrying out activities of daily living using right hand.

The disability is assessed as below :

1. Pain and mental trauma
2. Temporary disability of 100% for a period of ten weeks from date of injury.
3. Permanent partial disability of 11% (Eleven percentage) as per Mc Bride scale.

4. It shows that the appellant had sustained permanent partial disability of 11%. The Tribunal found that only 5% can be accepted since the fracture has been united. But we find that the Doctor had also certified that there is partial ankylosis of right wrist.

5. In that view of the matter and in view of the fact that the certificate is issued by a competent doctor and there is no dispute regarding the injuries also, the disability can be assessed at 11%. The Tribunal has adopted 15 as the multiplier since the appellant was aged 40. Accordingly, the compensation under the head of disability is recalculated as ₹59,400/- (3000 x 12 x 15 x 11%).

6. As far as the compensation towards pain and suffering is

concerned, we are of the view that since he had suffered fracture and other injuries and had undergone surgery also, an amount of ₹25,000/- can be granted under this head.

7. Accordingly, the total compensation is recomputed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical and Miscellaneous expenses	25177
Transportation to hospital	1000
Bystander's expenses	300
Extra nourishment	1000
Damage to clothing	250
Loss of earning	9000
Pain and suffering	25000
Disability	59400
Loss of amenities	9000
Total	130127
	Rounded off to ₹1,30,100/- (Rupees One lakh thirty thousand one hundred only)

8. The amount 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. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.

