

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 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

MACA.No. 1185 of 2014 ()

AGAINST THE AWARD IN OPMV 208/2009 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, IRINJALAKUDA DATED 30-01-2014

APPELLANT/PETITIONER:

SUBRAMANIAN

S/O.VELAYUDHAN, CHETTICHI VEETIL HOUSE

NELLALAM DESOM, CHERUVANNUR, KOZHIKODE DISTRICT.

BY ADV. SRI.V.BINOY RAM

RESPONDENTS/RESPONDENTS:

1. USHAKUMARI N.

D/O.NARAYANAN NAIR, CHELAPURATHU HOUSE, ANTHINADU P.O
PALA, KOTTAYAM DISTRICT, PIN-686 651

2. AJIMON, S/O.KUMARAN

AKKEKUNNEL HOUSE, ETUMANOOR DESOM, VILLAGE
KOTTAYAM, PIN-686 631

3. THE NEW INDIA ASSURANCE COMPANY LTD.

BRANCH OFFICE, M.G.ROAD, ETUMANOOR
KOTTAYAM, PIN-686 631

R3 BY ADV. SRI.JOHN JOSEPH VETIKAD

R3 BY ADV. SRI.C.JOSEPH JOHNY

R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1185 of 2014

Dated this the 7th day of January 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor traffic accident. The accident occurred on 10.12.2008 when the bus bearing Registration No. KL-5/W 441 in which he was travelling, hit against a lorry. He sustained very severe injuries. From Ext.A2 wound certificate, it is seen that, the appellant sustained crush injury of his left hand, total avulsion amputation of left upper limb, at mid forearm and complete amputation of (L) thumb. He was immediately admitted in Elite Mission Hospital. He underwent treatment there as in-patient from 10.12.2008 to 29.12.2008; thereafter from 17.1.2009 to 22.1.2009 and from 20.7.2009 to 24.7.2009. The left arm of the appellant could not be of any use for any functional purposes; his middle forearm up to hand lost sensation; he lost ability to move his fingers except only flicker movement; lost movement for wrist and

became impossible to grip anything. In the disability certificate Ext.A9, he is assessed to have 32% disability.

2. The appellant was a carpenter by profession. Claiming that he was earning a monthly income of Rs. 4,000/-, the claim petition was filed seeking compensation to the tune of Rs. 10,26,000/-. The Tribunal awarded a total compensation of Rs.5,61,190/- reckoning his monthly income at the rate of Rs. 3,500/- . Even though his disability was assessed as 32% in Ext A9 certificate and the Doctor was examined as PW1 to prove the same the Tribunal fixed his disability at 30%. This appeal is filed seeking enhancement of compensation on the ground that the income reckoned is too low and compensation awarded under various heads are thoroughly inadequate.

3. We heard the learned counsel on both sides.

4. We find that the appellant is a carpenter by profession. At the age of 38 years, he has become incapacitated to continue his avocation as carpenter, on account of the accident, in which his left arm got crushed. Having regard to the wage structure prevailed at the relevant time, we find that the monthly income claimed by the appellant @ Rs. 4000/- is quite reasonable and

the Tribunal was not justified in reckoning his income as Rs. 3500/- per month. Similarly we do not find any reason for the Tribunal to reduce the percentage of disability to 30% from 32% in Ext P9 disability certificate which is proved through PW1. Therefore, we re-fix the compensation awarded under the head loss of earning and permanent disability reckoning his income at the rate of Rs. 4,000/- per month and percentage of disability as 32%.

5. We find that the amount awarded under various heads are thoroughly inadequate. Towards bystander expenses, a sum of Rs. 4,200/- alone was awarded @ Rs. 150/- per day. The accident occurred in the year 2008. We enhance the amount of bystander's expenses reckoning Rs. 250/- per day which comes to Rs.7,000/- for 28 days. Similarly, under the head of pain and suffering Tribunal awarded only a sum of Rs. 25,000/-. We find that the the nature of injuries sustained on appellant had been very grievous and he was subjected to various courses and types of treatments including surgeries. He underwent treatment as inpatient in the hospital in 3 different spells during 10.12.2008 to 22.1.2009. During the said period, he would have been

suffering a lot on account of his crushed hand. The medical expenses itself came to Rs. 2,48,390/-. Apart from that, he became disabled to continue his avocation as a carpenter. The physical and mental pain of the appellant, in such condition is quite imaginable. It will not be possible to do any work of carpentry without using both hands. Therefore, we find that a sum of Rs. 60,000/- would be a just compensation under the head of pain and suffering. The Tribunal has awarded only a sum of Rs. 15,000/- towards loss of amenities. As already indicated, it became impossible for the appellant to continue his avocation in carpentry at the age of 38 years. Ever since the accident, he is not able to use his left hand for any purpose and he is thus permanently incapacitated to have the normal amenities and enjoyments as a normal human being, throughout the rest of his life, as he was having prior to the accident. Therefore, we find it just and proper to award a sum of Rs. 75,000/- as compensation towards loss of amenities and enjoyment of life.

6. Apart from the above, it is seen that the appellant has incurred disfigurement, with the crushed and immobile left hand,

which is of a permanent nature. Therefore, we find it just and proper to award a sum of Rs.25,000/- towards disfigurement. Therefore, the award passed by the Tribunal is modified as below:

<i>Sl. No .</i>	<i>Head of claim</i>	<i>Amount awarded</i>	<i>Modified award amount</i>	<i>Basis</i>
1	Loss of earning	42000 (Rs.3500x12 months)	48000	Rs.4,000x12
2	Transportation expenses	4000	4000	
3	Damage to clothings	500	500	
4	Medical & Miscellaneous	2,48,390	248390	
5	Extra nourishment	500	500	
6	By-stander's expenses	4200 (Rs.150/- x 28)	7000	Rs.250x28
7	Pain and suffering	25000	60000	
8	Permanent disability	2,01,600	245760	4000x12x16x32
9	Loss of amenities	15000	75000	
10	Loss of earning power	20000	20000	
11	Disfigurement		25000	
	Total	5,61,190/-	7,34,150/-	

Thus the claimant will be entitled to a total amount of Rs. 7,34,150/- (Rupees Seven lakh Thirty Four Thousand One hundred and fifty only) as compensation.

7. The Tribunal has granted interest only at the rate of 7.5.% p.a. In the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.**

[(2009)4 SCC 513], we fix the interest at the rate of 9% p.a from the date of petition.

The Insurance Company is directed to deposit the entire 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 allowed accordingly. No cost.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge