

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

MACA.No. 941 of 2009 ()

AGAINST THE AWARD IN OPMV 1277/2002 ON THE FILE OF THE ADDITIONAL
MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED 29-08-2008

APPELLANT/PETITIONER::

K.J.YESUDAS

KOMAROTH HOUSE, KANNANGATTU ROAD, EDAKOCHI DESOM
EDAKOCHI VILLAGE, ERNAKULAM DISTRICT.

BY ADVS.SRI.P.M.JOSHI
SRI.JINU JOHN

RESPONDENTS/RESPONDENTS:

1. JAYADEVAN
AGED 28 YEARS, KUNDUPARAMBIL HOUSE
WEST OF KUMBALANGI FERRY, EDAKOCHI DESOM
EDAKOCHI VILLAGE.

2. M.K.ABU, MULAKKAMPALLY HOUSE,
PADAMUGHAL, KAKKANAD, COCHIN.

3. NATIONAL INSURANCE COMPANY LIMITED,
DAMODAR CHAMBERS, STATUE JUNCTION, THRIPPUNITHURA.

R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.941 of 2009

Dated this the 6th day of April 2015

JUDGMENT

Ramachandran Nair , J.,

The claimant has filed this appeal seeking further enhancement of quantum of compensation.

2. The accident occurred on 12.4.2002 at 9.40 a.m. He was a maison by profession. He was walking along the northern side of the Palluruthy-Edakochi road, near the gate of St.Mary's Church and the offending vehicle a bus bearing registration No. KEE-4755 hit him down and the same caused serious injuries to him. He was immediately taken to Gautham Hospital, Panayappilly and he was treated as inpatient for a period of 19 days.

3. The Tribunal has granted total compensation of Rs. 2,52,778/- with interest at the rate of 7.5% p.a from the date of petition.

4. Paragraph 7 of the award shows that he has sustained the following injuries:-

1. Lacerated wound 2x1/2 x1/2 cm on the left end of forehead;

2. Abrasion near the above wound.

3. Abrasion at the lateral end of he left eye brow.

4. Lower lip the mucous membrane torn apart from the gumline 7x3x3cm.

5. The Tribunal has explained various aspects in the said paragraph. Ext.A7 biopsy cytology report showed that his spleen was ruptured with tear and haemorrhage. The discharge summary also showed that he has suffered fracture left pedicle-C5-C6 with bilateral neuralgia and rupture of spleen. He had undergone laparatomy and splenectomy under general anesthesia on 13.4.2002. Ext.A7 further shows that he had also suffered fracture cervical vertebra C7 level, for which cervical traction was given by the Ortho Surgeon. The report of the Medical Board shows that the Board has assessed permanent disability as 34%, out of which 24% is orthopedic disability and 10% is surgical disability as per MC Bride's Scale.

6. The Tribunal noted that he is still undergoing treatment and was remaining unmarried. It was found that he is unable to do any hard labour after the accident going by the evidence of PW1 and PW2.

7. Learned counsel for the appellant submitted that the monthly income fixed by the Tribunal is too low viz., Rs.2,000/-. He was working as a maison and was earning good amount and he was aged only 26 at the time of the accident. Learned counsel for the Insurance Company submitted that going by the finding by the Tribunal his age is reckoned as 30 as recorded in Ext.A11 disability certificate.

8. The learned counsel for the appellant submitted that the Tribunal has granted only meagre amounts for pain and suffering, loss of earning, loss of amenities and the amount towards permanent disability. It is also submitted that for future treatment, no amount has been granted and for loss of prospectus of marriage also nothing has been provided.

9. It is seen that the appellant was a maison and the accident occurred in the year 2002; the monthly income is

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claimed at Rs. 4,000/-. We are of the view that the accident being of the year 2002 and going by the wage structure prevailed during that period, Rs. 3,500/- can be taken as the monthly income. Therefore, compensation towards permanent disability will have to be calculated by reckoning 34% whole body disability. The multiplier adopted is 17. Thus the appellant will be entitled to compensation for permanent disability at Rs. $3500 \times 12 \times 17 \times 34 / 100 =$ Rs. 2,42,760/-

10. In the light of the sufferings he had to undergo and in the light of the nature of serious injuries, he is entitled for more amount towards pain and sufferings. We fix the same at Rs. 50,000/-. For loss of earning he will be entitled to amount for six months as already granted by the Tribunal totalling Rs.21,000/-.

11. Learned counsel for the appellant argued vehemently for awarding a reasonable amount towards future treatment. We have gone through the evidence of PW2 also. Of course PW2's evidence will show that his immunity system has been affected by the damage of the spleen. But as far as the nature of

future treatment is concerned, PW2 has not indicated anything in his deposition. Of course the Tribunal has observed in paragraph 7 of the judgment that his treatment is still continuing. For medical expenses, an amount of Rs. 52058/- has been granted as supported by bills. The nature of the future treatment being not indicated, we can only fix a notional sum towards future treatment. We fix an amount of Rs. 20,000/- towards future treatment. As far as loss of amenities and loss of inconvenience is concerned, the Tribunal has awarded an amount of Rs. 10,000/- only. In the light of the nature of injuries sustained by him, the same will affect his personal avocation. We provide an amount of Rs. 40,000/- towards loss of amenities and inconveniences. As far as loss of prospectus of marriage also, we are of the view that he is entitled for proper compensation and we fix the amount at Rs. 40,000/-.

12. The Tribunal has granted a total compensation of Rs. 4,000/- towards attendants' expenses and extra nourishment. Since the accident is of the year 2002, we are of the view that an amount of Rs. 200/- per day can be reckoned for bystander's

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expenses and the total amount towards the same will be Rs. 3,800/- and we grant a further amount of Rs. 3,000/- for extra nourishment also.

13. Accordingly, the compensation is refixed as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amt.claimed</i>	<i>Amt.modified</i>
1	Medical Expenses (supported by bills)	52058	52058
2	Transportation & damage to clothes	1000	1000
3	Attendant expenses & extra nourishment	4000	3800
	Extra nourishment	-	3000
4	Shock, pain & sufferings.	35000	50000
5	Loss of earning	12000	21000
6	Loss of amenities & convenience	10000	40000
7	Towards permanent disability	138720	242760
8	Future treatment	-	20000
9	Loss of Prospects of marriage	-	40000
	Total	-	473618

(Rupees Four lakh Seventy Three Thousand Six hundred and Eighteen only).

14. Thus the appellant will be entitled to a total compensation of Rs.4,73,618/- which is rounded off to

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Rs. 4,73,600/-. The enhanced compensation will carry interest at the rate of 9% p.a.

15. The parties will suffer their costs in the appeal. The Insurance Company is directed to deposit the amount less the amount already deposited within a period of three months and we permit the claimant to withdraw the amount also. The parties will suffer their costs in this appeal.

Sd/-

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

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge