

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 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

MACA.No. 1915 of 2011 ()

**AGAINST THE AWARD IN OPMV 1045/2005 of MOTOR ACCIDENT CLAIMS
TRIBUNAL., THALASSERY DATED 26-02-2011**

APPELLANT/PETITIONER:

**MAJEESH N.S
AGED 25 YEARS, S.O SEBASTIAN, NELLINILKUM THADATHIL
PO, KANAMVAYAI, RAJAGIRI
CHERUPUZHA (VIA)**

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/RESPONDENT NO.3:

**NATIONAL INSURANCE CO. LTD.
PAYYANNUR, KANNUR- 670 307.**

**R, BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)
R BY SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

SMM

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

.....
M.A.C.A. No. 1915 of 2011
.....

Dated this the 25th day of March, 2015.

J U D G M E N T

P.V.Asha, J.

The appellant is the injured in a motor vehicle accident, that happened on 22-2-2005. While he was riding a motor cycle, he was hit down by a jeep. He had sustained very serious injuries.

2. The following are the injuries sustained by him:- multiple fractures base of skull, diffused cerebral edema, small E.D.H on right. He was admitted in Pariyaram Medical College, where he underwent inpatient treatment for 58 days. He had to undergo treatment almost continuously even thereafter. Records were produced to show the treatment particulars for the period from the date of accident in 2005 to 8-1-2010. In between he underwent Ayurvedic treatment also. As per Ext.XI

certificate, 30% disability was assessed in relation to the appellant.

3. The claim petition was filed before the Tribunal seeking compensation to the tune of Rs.2,72,000/- which was limited to Rs.2,00,000/-. The Tribunal awarded a sum of Rs.2,55,500/-. Out of this 20% was deducted towards contributory negligence and a sum of Rs.2,04,400/- was awarded. This appeal is filed challenging the finding as to contributory negligence and consequential deduction from the award amount, while seeking enhancement of compensation. We heard the learned Counsel appearing on either sides.

4. The appellant was 19 years old at the time of accident and it was claimed that he was working as a cleaner in a bus and was earning Rs.6000/- per month. The appellant got himself examined before the Tribunal and it was admitted therein that his job as a cleaner was not permanent. Therefore, the Tribunal fixed monthly income as Rs.3000/-. There is no serious dispute as regards his employment as a cleaner. We are of the view that a sum of Rs.4000/- can be reasonably fixed as his

monthly income, having regard to the wage structure prevailing at that time.

5. The appellant has undergone various procedures of treatment both Allopathic and Ayurvedic. He was found to have lost one eye with complete loss of vision on account of Traumatic optic neuropathy. The Tribunal has awarded loss of earnings for 3 months @Rs.3000/. We enhance the same to Rs.12000/- @ Rs.4000/- per month. Compensation under the head of disability is recalculated, reckoning his income as Rs.4000/- and disability as 30% and the same will come to Rs.2,59,200/- ($4000 \times 12 \times 18 \times 30 / 100$). The Tribunal has awarded a sum of Rs.5800/- towards bystanders' expenses at the rate Rs.100 per day for 58 days. Reckoning at the rate of Rs.250 per day, we enhance the same to Rs.14,500/-.

6. The compensation awarded under the head of pain and sufferings and loss of amenities and conveniences are also liable to be enhanced. Having regard to the nature of the injuries sustained, treatment undergone and discomfort and inconvenience caused to the appellant, we enhance the compensation awarded

towards pain and sufferings to Rs.30000/-. We award a sum of Rs.30,000/- towards loss of amenities and enjoyment of life, in view of the fact that on account of loss of vision in one eye, he will never be in a position to avail the normal amenities of life. This disability and disfiguration affects his marriage prospects and we award a sum of Rs.35,000/- towards diminution in prospects of marriage.

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount modified</i>
Loss of earning (total)	9000	(4000x3)12000
Medical and miscellaneous expenses	32900	32900
Bystander expenses	5800	(58x250)14500
Extra nourishment.	6000	6000
Damage to clothing etc.	N.A	500
Pain and suffering	23000	30000
Disability income	172800	(4000x12x18x30/100) 259200
Loss of amenities and conveniences etc.	N.A	30000
Any other heads (review treatment)	5000	5000
Transportation expenses	1000	1000
Loss of prospects of marriage		35000
TOTAL	2,55,500/-	4,26,100/-

7. Therefore, the total compensation will come to Rs.4,26,100/-. The Tribunal found that the appellant was not having a license and that has contributed to the accident. The learned Counsel for the Insurance company points out that the absence of license alone was not the reason for finding negligence on the part of the injured. It is pointed out that as per Ext.B3 scene mahazar, the appellant was found to be on the wrong side. The learned Counsel for the appellant points out that the scene mahazar was prepared only after 4 days of accident. In the light of the judgment of the apex court in **Sudhir Kumar Rana's case (2008 (3) KLT 322 (SC))**, the absence of license to drive a vehicle alone cannot be the criteria for arriving at a finding of negligence as regards the accident. Therefore, in the absence of any evidence to prove that the accident occurred only due to the absence of license or that the absence of license for the appellant has contributed to the accident, we fix the percent of negligence at 10% on the part of the appellant. After deducting 10% towards contributory negligence, the compensation due to the appellant will be Rs.3,83,490/-.

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition. The Insurance Company will deposit the amount, less any amount already deposited before the Tribunal, within a period of three months.

Appeal is allowed accordingly. The parties shall suffer their respective costs.

**T.R.RAMACHANDRAN NAIR
JUDGE**

**P.V. ASHA
JUDGE**

smm