

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 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 2012 of 2011 ()

AGAINST THE AWARD IN OPMV 1000/2004 of M.A.C.T., THALASSERY DATED
09-02-2011

APPELLANT/PETITIONER:

RAHUL RAJ AGED 19 YEARS
S/O.RAJAN, PUNJAYIL HOUSE
NEAR KAMALA NEHRU U.P.SCHOOL, P.O.VALAPATANAM
KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT/RESPONDENT NO.3:

NEW INDIA ASSURANCE CO. LTD.
TRIPURI BUILDING, EAST NADAKKAVU, CALICUT-673 011.

BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A.No.2012 OF 2011

Dated this the 6th day of February, 2015

JUDGMENT

Asha J.

Appellant is the injured in a motor vehicle accident. He was a minor aged 12 years at the time of the accident which occurred on 26/1/2004 on being hit by a car when he was travelling on a motor bike as a pillion rider. He was immediately taken to A.K.G.Hospital, Kannur. Thereafter he was referred to Pariyaram Medical College. He underwent treatment in City Hospital, Mangalore.

2. A claim petition was filed seeking compensation to the tune of ₹2 lakhs. The Tribunal awarded a sum of ₹90,200/- along with interest @ 7.5% per annum.

3. The appellant underwent treatment as an inpatient from 26.1.2004 to 17.02.2004. He sustained fracture of U/3, M/3 junction, shaft of right tibia with laceration in leg with right heel flap injury. The particulars of treatment showed that he underwent wound debridement,

external fixator application on right tibia, K-wire fixation of head flap. S.S.G. of right leg was done and Ex.fix and K-wire removal and A/K cast application was done. The appellant claimed that his disability was assessed at 10% on the strength of Ext.A10 certificate. The Tribunal found that the certificate was not issued by the Hospital in which the appellant underwent treatment. The Tribunal found that there was limping of right lower limb and reckoned the disability as 3%. Reckoning the income @ ₹3,000/- per month and adopting a multiplier of 15, a sum of ₹16,200/- was awarded by the Tribunal towards disability.

4. The learned counsel for the appellant submits that the amount awarded under the head of compensation for the disability as well as under the head of pain and suffering etc. are thoroughly inadequate.

5. We heard the learned counsel appearing for the Insurance Company also, who objected the claim for enhancement.

6. It is seen that the appellant underwent treatment for severe injuries on his leg and he had to lose his classes for a period from

26.1.2004 to March 2004. The Tribunal has awarded a sum of ₹20,000/- towards pain and suffering. Having regard to the nature of the injuries and the treatment underwent and the discomfort and inconvenience caused during the said period, we award a sum of ₹40,000/- towards pain and suffering. Similarly, the appellant was deprived of his normal enjoyment of life and pleasures of childhood during the period of treatment. Therefore, we award a sum of ₹ 10,000/- towards loss of amenities. The Tribunal has awarded a sum of ₹2,200/- alone for bystander expenses. We enhance the same to ₹3,300/-. Thus the award passed by the Tribunal is modified accordingly.

7. The compensation is recomputed in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical and miscellaneous expenses	33900
Bystander expenses	3300
Transportation expenses	3900
Extra nourishment	5000
Pain and suffering	40000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Disability	16200
Loss on account of academic days	5000
Loss of amenities	10000
Any other heads (review treatment)	4000
Total	121300 (Rupees one lakh twenty one thousand three hundred only)

8. The appellant will be entitled to interest @ 9% per annum from the date of petition for the enhanced compensation. 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

P.V.ASHA, JUDGE

SV.