

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

MACA.No. 2029 of 2011 ()

AGAINST THE AWARD IN OPMV 113/2003 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
KALPETTA DATED 12-10-2009

APPELLANT/APPELLANT:

JASIM.P.M.
AGED 31 YEARS, S/O. ABOOBACKER, KUNNATH HOUSE
VENGAPPALLY POST, PINANGODE, VYTHIRI TALUK
WAYANAD DISTRICT

BY ADV. SMT. CELINE JOSEPH

RESPONDENT/RESPONDENT:

THE BRANCH MANAGER,
THE UNITED INDIA INSURANCE COMPANY LTD.
BRANCH OFFICE, RAWTHER BUILDINGS, PINANGODE JUNCTION
KALPETTA-673 121.

BY ADV. JOHN JOSEPH VETTIKKAD (B/O)
BY ADV. SRI. PMM. NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR & ANIL K.NARENDRAN, JJ.

M.A.C.A.No.2029 OF 2011

DATED THIS THE 7th DAY OF APRIL, 2015

JUDGMENT

RAMACHANDRAN NAIR, J.

The appellant, who was the pillion rider of a motor bike bearing registration No.KL-12B/3383 suffered injuries in an accident which occurred on 26.1.2003. The offending vehicle is another motor vehicle bearing registration No.KL-10A/4598. On sustaining injuries, the appellant was admitted in the Assumption Hospital, Sultan Bathery and later in the Medical College Hospital, Kozhikode. He was treated as an inpatient there till 13.2.2003.

2. Before the Tribunal, the appellant examined himself as PW1 and produced Exhibits A1 to A16 documents. No contra evidence was adduced by the respondent. The Tribunal found that negligence is on the part of the rider of the offending vehicle and awarded a compensation of ₹72,350/-. The appellant contends that the compensation fixed by the Tribunal is inadequate.

3. The appellant was aged 23 at the time of accident and he claimed that he was a salesman earning ₹5,000/- per month. The Tribunal has fixed the monthly salary at ₹2,500/-. The learned counsel for the appellant submitted that the monthly income fixed by the Tribunal

is too low. One of the aspects pointed out by the learned counsel for the appellant is that the Medical Board has examined the appellant pursuant to the interim order passed by this Court and has certified the permanent disability at 10%. We have perused the said certificate. The Medical Board, Medical College Hospital, Kozhikode has certified that he has got 10% neuro surgical disability.

4. The Tribunal has granted compensation under various heads as shown below:

Loss of earnings for six months :	₹15,000/-
Transport to hospital :	₹ 3,000/-
Extra nourishment :	₹ 1,000/-
Damage to clothing :	₹ 500/-
Bystander's expenses :	₹ 5,250/-
Medical expenses :	₹ 2,600/-
Loss of amenities :	₹25,000/-
Compensation for pain and suffering :	₹20,000/-

Total :	₹ 72,350/-
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5. Being a salesman, according to us, reasonable amount ought to have been fixed as monthly income and since the accident is of the year 2003, we adopt an amount of ₹4,000/-. Therefore, the appellant will be entitled for partial loss of earning for six months at the same rate. Instead of ₹15,000/- awarded by the Tribunal, the same will be ₹ 25,000/-.

6. The Tribunal has granted ₹20,000/- towards compensation for pain and suffering. The appellant was treated as an inpatient for a period of 20 days and he had taken rest for another six months, going by the evidence also. He had to continue treatment for a long time, which is the submission made by the learned counsel for the appellant.

7. Going by the discharge certificate Ext.A3, he had sustained fracture of frontal maxilla(both) nasal bone. Exts.A6 and A7 are the certificates produced in support of the injuries, the treatment undertaken and the treatment procedures adopted by the Doctors. Ext.A7 has been referred to by the Tribunal in paragraph 7, which is the CT scan report. It is pointed out that he had sustained haemorrhagic contusion right frontal region and right frontal extra axial bleed, mild diffuse cerebral oedema, etc. He was also treated in the Neuro Surgery Department, which is supported by Ext.A8 discharge summary from the said department of the Medical College Hospital. He was admitted there on 24.3.2003 and discharged on 25.3.2003. What is evidently pointed out by the learned counsel for the appellant is the difficulty of the appellant because of the injuries sustained, namely he has lost his sensation powers to smell, taste, etc. and evidence of PW1 is also to that effect. But as far as the disability certificate is concerned what is certified is 10% neuro surgical disability. Therefore, we will be justified in assessing compensation on

that basis.

8. We therefore are of the view that the appellant is entitled for enhancement of compensation under the heads pain and suffering, loss of amenities and loss of earnings. As far as transportation to hospital, extra nourishment, damage to clothing, bystander expenses, etc. are concerned, we confirm the award passed by the Tribunal. We therefore re-fix the compensation in the following manner.

Loss of earnings for six months :	₹24,000/-
Transport to hospital :	₹ 3,000/-
Extra nourishment :	₹ 1,000/-
Damage to clothing :	₹ 500/-
Bystander's expenses :	₹ 5,250/-
Medical expenses :	₹ 2,600/-
Loss of amenities :	₹30,000/-
Compensation for pain and suffering :	₹35,000/-
Compensation for permanent disability :	₹86,400/-

Total :	₹1,87,750/-
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(Rupees One Lakh Eighty Seven Thousand Seven Hundred and Fifty only)

9. The Tribunal has found that the Insurance Company is liable to meet the liability. The total compensation due to the appellant will be ₹1,87,750/-. We have considered the period of treatment as well as the seriousness of the injuries for enhancing the compensation for pain and suffering. We have also considered the adverse effect of the disability on his avocations in life for enhancing

the compensation under the head loss of amenities. As far as permanent disability is concerned, it is clear that he will have to live with the disability throughout his life and there is no chance for improvement also and we have assessed compensation accordingly. Therefore, the appellant is entitled for a total compensation of ₹ 1,87,750/- (Rupees One Lakh Eighty Seven Thousand Seven Hundred and Fifty only) and we award interest at 9% per annum for the enhanced compensation from the date of petition. The Insurance Company is directed to deposit the amount within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited. On deposit of the amount, we permit the appellant to withdraw the amount also.

The appeal is allowed as above. There will be no order as to costs.

Sd/-

**T.R.RAMACHANDRAN NAIR,
JUDGE**

Sd/-

**ANIL K.NARENDRA,
JUDGE**

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