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 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

MACA.No. 2406 of 2013 ()

AGAINST THE AWARD IN OPMV 710/2010 of MACT PALA DATED 26-03-2013

APPELLANT/PETITIONER:

THOMAS AGED 61 YEARS
S/O.JOSEPH, MALIKAPPURATHU HOUSE
ERUMELY THEKKU VILLAGE, PROPOSE PO, MES COLLEGE BHAGOM
KOTTAYAM DISTRICT

BY ADVS.SRI.C.M.TOMY
SRI.K.J.JOSEMON

RESPONDENTS)/RESPONDENTS:
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1. BINOY JOHN
S/O.JOHN, PUTHUPARAMBIL HOUSE, KOLLAMULA VILLAGE
VENKURINJI PO, VECHOOCHIRA, RANNI
PATHANAMTHITTA DISTRCTI, KERALA, PIN 689 645

2. THE NEW INDIA ASSURANCE CO.LTD .DO.NO.1
POLACHIRACKAL CHAMBERS, OPPOSITE COLLECTORATE
KOTTAYAM DISTRICT, PIN 686 001.

R2 BY ADV. SRI.VIJU THOMAS
R2 BY ADV. SMT.M.MEENA JOHN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T. R. RAMACHANDRAN NAIR &
P.V.ASHA, JJ.
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M.A.C.A. No.2406 of 2013
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Dated this the 12th day of January, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 05.04.2010 while he was a passenger in an autorickshaw which collapsed. He sustained very severe injuries and was immediately taken to Assisi Hospital Mukkoottuthara and then to Medical College Hospital, Kottayam. After treatment there for a period of 16 days he was admitted in Government Hospital, Kanjirappally. He has sustained cervical fracture neck of femur. He was aged 58 years and was engaged in a business of lottery vending. A claim petition was filed seeking compensation to the tune of ₹4,21,000/- which was limited to ₹2,00,000/-.

2. The Tribunal awarded a total sum of ₹86,990/- along with 7.5% interest per annum. This appeal is filed seeking enhancement of compensation mainly on the ground that no

amount was granted towards loss of amenities and enjoyment of life and for future treatment. The appellant has got a case that the amounts awarded under various heads of compensation are thoroughly inadequate.

3. We heard the learned counsel for the appellant as well as the Insurance Company who opposed the claim for enhancement.

4. It is stated that the appellant incurred disability of 10% to whole body as certified by the Medical Board attached to the Medical College Hospital, Kottayam as per Ext.X1 Disability Certificate. The Tribunal reckoned the disability as 7% only towards the permanent disability for the purpose of compensation. The income reckoned by the Tribunal was ₹4000/- per month as against the claim of the appellant that he was earning a sum of ₹7000/- per month. The Tribunal awarded a sum of ₹26,880/- towards disability reckoning the percentage of disability as 7% and multiplier as 8. At the same time the claim for compensation under the head loss of amenities in life was rejected, relying on the decision **George v. Thomas E.T and**

others (ILR 2013(1) Ker 559) saying that there is no necessity of awarding compensation for physical disability and for loss of amenities in life, as both heads are one and the same.

5. We find that the appellant incurred disability on account of injuries and became unable to carry on normal avocations on account of the accident and he is liable to be compensated towards non-pecuniary loss caused to him which cannot in fact be re-couped in terms of money.

6. The learned counsel for the appellant relied on the judgment of this Court in **National Insurance Co.Ltd v. Anoopkumar** (2014(1) KLT 266), in which this Court observed as follows:-

> "But we note that the Tribunal has not awarded any compensation to the 1st respondent for loss of amenities and enjoyment in life, which is occasionally described by some Tribunals as disability also. We are of opinion that adequate compensation has to be awarded to the 1st respondent for loss of amenities and enjoyment in life commensurate with the 10% disability suffered by him taking into account the effect of that disability on his personal life. In the facts and circumstances of the case, we fix that compensation as ₹50,000/-."

Therefore in the light of the above judgment we find that the Tribunal was not correct in not awarding any amount for loss of amenities.

7. We also find that the Tribunal was not correct in not reckoning the disability found in Ext.X1 certificate. Therefore the compensation awarded to him under the head of disability is to be re-fixed reckoning the percentage disability as 10% instead of 7%. Therefore, the amount awarded under the head of compensation for disability will come to ₹38400/- (4000x12x8x10%).

8. It is seen that the appellant had to undergo treatment as inpatient for a period of 26 days i.e. 16 days in Medical College Hospital, Kottayam and 10 days in Government Hospital, Kanjirappally. The compensation awarded under the head of bystanders expenses is only ₹3,200/- @ ₹200 per day. We find that the compensation is liable to be enhanced at the rate of ₹250/- for 26 days which will come to ₹6500/-. Under the head of pain and sufferings the Tribunal had awarded only a sum of ₹22000/-. Having regard to the nature of injuries and in patient

treatment for a period of 26 days in two hospitals, we find it just to award as sum of ₹35,000/-. Similarly as the appellant has become unable to enjoy normal avocation of life as he was having before the accident, it is only just to award a sum of ₹30,000/- towards loss of amenities.

The award of the tribunal is modified as follows:-

Head of Claim	***Amount awarded in rupees***
Loss of earnings	20000
Transport to Hospital	1500
Extra-nourishment	2000
Damages to clothing	500
Medical Expenses	10910
Bystander Expenses	6500
Part II	
Pain and suffering	35000
Disability	38400
Loss of amenities	30000
Total compensation	**144810**

9. The Tribunal has awarded interest only 7.5%. We award interest @ 9% per annum from the date of petition in the light of the judgment of the Supreme Court in **Supeidei (Smt) and others v. National Insurance Company Ltd. and another** (2009(4) SCC 513). The Insurance Company shall deposit the amount within a period of three months .

The appeal is disposed of accordingly.

T. R. Ramachandran Nair, Judge

P.V. Asha, Judge

sj13/1