IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

MACA.No. 2115 of 2011 ( )

AGAINST THE AWARD IN OP(MV) 1185/2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 20.07.2010

APPELLANT/CLAIMANT:

O.K.RAVI, AGED 51 YEARS
S/O. APPU, OTTAKANDATHIL HOUSE, P.O.MADAVOOR
NARIKUNI, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS:
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1. MOHAMMED MANSOOR
S/O. KUNHI MOHAMMED, PARAMBAN HOUSE, P.O.PANGCHENDY
KOLATHOOR, MALAPPURAM-679 338.

2. MOHAMMED YOONUS P.
S/O. HAMZA, PALATHINGAL HOUSE, VALAMBUR
MALAPPURAM-679 325.

3. THE NEW INDIA ASSURANCE CO. LTD.
OTTAPALAM BR., 2ND FLOOR, R.J.COMPLEX
MAIN ROAD, OTTAPPALAM-679 101.

R3 BY ADV. SRI.KKM.SHERIF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

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M.A.C.A.No.2115 2011

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Dated this the 4th day of September, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal filed by the claimant he is aggrieved by the inadequacy of the compensation. The appellant claimed a total compensation of Rs.4.62 lakhs for the injuries sustained by him on 6.4.2009. He was riding a motorcycle bearing registration No.KL-57-5380 from Madavoor to Perinthalmanna and when he reached the place at Kottilangadi it was hit by a bus bearing registration No. KL-09-J-7427. Serious injuries were caused to him and he was taken to the Government Hospital, Manjery and from there he was referred to the Medical College Hospital, Kozhikode. He continued the treatment up to 4.5.2009. Again he was taken to the Al Shifa Hospital, Perinthalmanna on 27.5.2009 and he was discharged on 15.06.2009.

2. Mainly the learned counsel for the appellant submitted that the lesser amount of compensation granted towards permanent disability to the tune of 49% is not fully correct. It is submitted that he is a permanent employee with the B.S.N.L. Perinthalmanna as a Telecom Mechanic. He was aged 49 as on the date of the accident and was having monthly salary of Rs.17,808/-. The Tribunal adopted a notional income at Rs.1,500/- for calculating the amount of compensation after retirement. While doing so, the Tribunal was of the view that after the accident he is still continuing in service and he is drawing the salary and other benefits and therefore the disability suffered by the appellant has not affected his earning capacity. The Tribunal proceeded to state that his earning capacity after retirement will be affected. It is submitted by the learned counsel for the appellant that the true tests for determining compensation in case of physical injury have not been considered by the Tribunal.

3. The learned counsel for the Insurance Company

submitted that the finding that there is no loss of earning capacity cannot be said to be wrong as he was still continuing in service. According to the learned counsel, only if there is loss of earning capacity there need be any assessment of compensation for permanent disability.

4. We cannot agree with the same. Physical injury itself is liable to be compensated which is the well settled principle for assessing the compensation in personal injury cases. Of course, the person who suffered the accident and has sustained serious injuries is entitled to be granted general damages under the head of pain and suffering, compensation for permanent disability, loss of earning capacity, and for loss of amenities of life. Thus the components for granting the compensation will include the compensation for permanent disability as well as for loss of earning capacity. Going by the decision of the Apex Court in **Kavita v. Deepak and Ors. [(2012) 8 SCC 604]** the appropriate principle will have to be adopted in this case also. We extract herein below paragraph 19 of the said

judgment:

> "19. In the light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

5. In that view of the matter also we cannot agree with the method adopted by the Tribunal in fixing the notional income that too for calculating the amount towards permanent disability for a period after retirement. More so because the claimant is liable to be compensated by taking the event namely the accident, i.e. based on the date of the accident itself. Therefore appropriate multiplier will have to be applied as evident from the judgment of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)**. But the learned counsel for the Insurance Company submitted that the permanent disability

herein can only be partial and it cannot be a disability to the whole body. We have verified the details as available from the records. The major injuries sustained by him are the following:

> "Type III B open fracture both bone (Rt) leg
> Fracture neck of talus (Rt) (loss of neck of talus)
> Crush injury (Rt) ankle with anterior raw area."

6. The Tribunal has accepted the percentage of disability shown in Ext.C1 which is the certificate issued by the Medical Board. Evidently it can be seen that the disability is to a limb and not for the whole body. Therefore we will take the correct percentage of disability as $1/3^{rd}$ of 49 i.e.16.33.

7. For calculating a fair and just compensation, we will adopt the multiplier of 10 that is up to the year of his retirement and by adding the compensation under various heads including that of permanent disability. Accordingly, we re-fix the compensation in the following manner:

Head of claim		Amount re-fixed by this court in Rs.
Transport to hospital		750
Extra nourishment		750
Compensation of leave availed	(17808x3)	53424
Treatment expenses		6631
Bystander's expenses	(100x44)	4400
Pain and suffering		10000
Permanent disability		348965
Total		4,24,920 **Rounded off to : 4,24,900 (Rupees four lakhs twenty four thousand nine hundred only)**

8. The Insurance Company was found liable to indemnify the owner, which finding we confirm. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

9. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit

being made, the appellant will be entitled for the release of the amount.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/