

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 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

MACA.No. 1171 of 2009 ()

AGAINST THE AWARD IN OPMV 1449/2005 of M.A.C.T OTTAPPALAM
DATED 25-08-2008

APPELLANT/PETITIONER:

VASU.N, S/O.NARAYANAN,
KURUTHIKODE HOUSE, THAROOR, ALATHUR
OTTAPALAM, PALAKKAD DISTRICT.

BY ADV. SRI.V.BINOY RAM

RESPONDENT(S) /RESPONDENTS:

1. BABOY ABRAHAM UTHUP
PANAYIDUTHUSHERILL HOUSE, HOUSE NO.44/346
JR.JANATHA ROAD, VYTILLA P.O., KOCHI,
ERNAKULAM.

2. THE NATIONAL INSURANCE CO.LTD.,
DAMODAR CHAMBERS, STATUE JUNCTION, TRIPUNITHURA.

R,R2 BY ADV. SRI.M.A.GEORGE
R1 BY ADV. SRI.GHOSH YOHANNAN
R1 BY ADV. SRI.K.RAKESH ROSHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A No.1171 of 2009

Dated this the 6th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant who sustained serious injuries in an accident is seeking enhancement of the compensation. Even though the Tribunal has found that he was entitled to an amount of Rs.81,100/-, as the rider of the motorcycle was found negligent in causing the accident to the extent of 50%, 50% of the compensation at Rs.40,550/- was granted.

2. The learned counsel for the appellant raised two contentions mainly; first one is that the finding on the negligence is not fully justified and the second one is that on considering the quantum of compensation, more amount should have been granted considering the period of treatment, towards pain and suffering and other special damages.

3. As far as the negligence aspect is concerned, the learned counsel for the Insurance Company submitted by relying upon the judgment in **United India Insurance Company Ltd.**

v. Mariamma George [2010 (2) KLT 44] that in the case of a composite negligence, the driver, owner and Insurance Company of each vehicle can be held liable only to the extent of liability fixed on them, in proportion to the negligence found. Herein the rider of the motorcycle was the petitioner in O.P(MV) No.1450/2005 and a common award was passed by the Tribunal finding that the negligence in this case, going by the scene mahazar, can be attributed to the rider of the motorcycle also. We have gone through the discussions on the evidence. It is true that the Police had registered a case against the driver of the car, which is the offending vehicle. But going by the scene mahazar, it is seen that the motorcycle was on the wrong side after crossing the middle line by about 1 ½ meters. The rider of the motorcycle was turning to a petrol pump and the Tribunal therefore found that the accident was in the extreme wrong side of the motorcyclist and since there was straight vision towards either side about 100 metres, the rider of the motorcycle should have been very careful. We do not find any reasons to interfere with the said finding.

4. The appellant was aged 25 years, was engaged in sales of book and was earning Rs.4,500/- monthly as per his

claim. He has sustained the following injuries going by the discussion in para.9:

“Head injury with fracture shaft femur (L), fracture base of IInd metatarsal (L) with undisplaced fracture patella (L), managed by fixing with intramedullary nailing of fracture shaft (L) femur.”

5. The period of inpatient treatment was from 28.04.2005 to 09.05.2005 and from 30.05.2005 to 16.06.2005 in the Jawahar Hospital, Thrissur. Going by the final diagnosis he had sustained fractures. The Tribunal has granted Rs.20,000/- towards pain and suffering and Rs.10,000/- towards loss of amenities of life and Rs.8,000/- towards loss of income for the treatment period for 4 months. We are of the view that the claim of monthly income at Rs.4,500/- is reasonable and therefore for loss of earnings for 4 months, he will be entitled for Rs.18,000/-. As far as the treatment and the details are concerned, it is clear that he had sustained very serious injuries. He had underwent a surgery on 09.05.2005. He had sustained 2 fractures, namely to the shaft of femur (L), fracture base of IInd metatarsal (L) with undisplaced fracture of patella (L). Fixing with intramedullary nailing of fracture shaft (L) femur was also done. He was treated

in Neurology wing as well as Orthopaedic department. Therefore we are of the view that an amount of Rs.40,000/- can be granted towards pain and suffering. Apart from the same, he will be entitled for Rs.6,000/- towards bystander's expenses. We grant Rs.3,000/- each towards expenses for transportation and extra nourishment and Rs.1,000/- towards damage to clothing. The Tribunal has granted a total amount of Rs.3,000/- under these 3 heads.

6. It is pointed out by the learned counsel for the Insurance Company that no disability certificate has been produced before the Tribunal and the Tribunal has granted Rs.10,000/- towards loss of amenities also.

7. The impugned award passed by the Tribunal is accordingly modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of income	Rs. 18,000.00
2	Pain and suffering	Rs. 40,000.00
3	Loss of amenities	Rs. 10,000.00
4	Extra nourishment	Rs. 3,000.00
5	Transportation expens	Rs. 3,000.00
6	Damage to clothing	Rs. 1,000.00
7	Medical expenses	Rs. 37,250.00

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
8	Bystander's expenses	Rs. 6,000.00
	TOTAL	Rs.1,18,250.00

(Rupees One lakh eighteen thousand two hundred and fifty only)

The appellant will be entitled for 50% of it to a total compensation of Rs.59,125/- (Rupees Fifty nine thousand one hundred and twenty five only) and the enhanced compensation will carry interest @ 9% from the date of petition.

The appeal is allowed accordingly. The parties will bear their respective costs in this appeal.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.Sto Judge