

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

MACA.No. 1251 of 2009 ()

AGAINST THE AWARD IN OPMV 3100/2002 OF MACT, THRISSUR

APPELLANT/PETITIONER:

MINOR NOUFAL N., REP. BY FATHER AND
GUARDIAN, ABDUL NAZAR @ NAZAR S/O. AHAMAD SAHIB
AMBALAPARAMBU HOUSE, P.O.KARINGARAPPILLY, VIA.
KODUMBU, PALAKKAD DIST 678 559.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

1. SADASIVAN, S/O THANKAN, THOTTUMEDU
HOUSE, P.O.KARIPODE, PALAKKAD DIST.

2. AMBILIKUTTAN, S/O. SHANMUGHAN,
THAZHATHE HOUSE, KAMBALTHARA, KANNIMARI.P.O.
PALAKKAD DIST.

3. UNITED INDIA INSURANCE CO. LTD., REP. BY
DIVISIONAL MANAGER, UNITED INDIA INSURANCE CO.LTD.
DIVISIONAL OFFICE, THRISSUR.

R1,2 BY ADV. SRI.LIJU. M.P
R3 BY ADV. SMT.M.LALITHA NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1251 OF 2009

Dated this the 18th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

Appellant, who is represented by his father in this appeal was aged 11 years at the time of the accident which occurred on 25.2.2002 at about 3.30 p.m. While he was walking thorough the public road and when he reached at Polpully, a motor cycle bearing Reg.No.KL 9/H 7665 which came from the opposite direction hit him and he fell down on the road and sustained serious injuries. He was initially taken to the District Hospital, Palakkad where he was treated as an inpatient for 18 days. Thereafter he was treated in the Medical College Hospital, Thrissur. In total he was treated as an inpatient for a period of 53 days. Aggrieved by the inadequacy of the compensation, this appeal is filed. The Tribunal has granted a total sum of Rs. 32850/- as compensation.

2. The appellant sustained injuries namely fracture tibia (left), injury on the shoulder joint, multiple abrasion all over the body and

multiple bodily injuries. This is supported by Ext.A2 wound certificate. In Ext.A2 certificate, it is stated that he was taken to the said hospital on 25.2.2002 and was discharged on 13.03.2002. It shows that there were injuries to the left ankle also.

3. It is submitted by the learned counsel for the appellant that the Tribunal has not considered the various aspects. It is submitted that the appellant was again admitted in the Medical College Hospital on 19.07.2002 and was discharged on 22.8.2002 as IP No.14309. He was treated there with external fixator. He was in crutches also. Therefore the total period of treatment is 53 days. We find from the discharge summary issued by the Medical College Hospital that he was admitted thereon 19.07.2002 and was discharged on 22.8.2002.

4. The Tribunal did not accept the disability certificate mainly for the reason that the Doctor has not been examined. It is issued by the Associate Professor of Orthopaedics, Medical College Hospital, Thrissur. The certificate shows that there is 10% disability. This was marked as Ext.A9. We have gone through the certificate. The certificate shows the following details which are shown as disabilities :

- 1) Hypertrophic calluses over tibial fracture site with tenderness over tibia. 3%
- 2) Malunited fracture (L) tibia with 8⁰ varus angulation and 7⁰ anterior angulation and 1 cm. shortening of tibial segment. 4%
- 3) Multiple adherent scar over (L) leg with (adhere to tibia) and packing of scar over (L) leg and tenderness 3%
- 4) Partial ankylosis of (L) ankle with pain on squatting 3%
5. It is seen that there is shortening of tibial segment by 1 cm.

We find no reason to discard the certificate as the same has not been challenged at all.

6. The Tribunal has granted compensation as evident from paragraph 9 in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Expenses for transportation	1500

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Expenses for extra nourishment	1000
Damages to clothing	500
Expense for treatment	10250
Expense for bystander	1600
Compensation for pain and suffering	10000
Compensation for loss of amenities	8000
Total	32850

7. As far as expenses for transportation is concerned, since the injured was treated in two different hospitals, we grant an amount of Rs.3,500/-. For extra nourishment also, Rs.1,000/- has been granted by the Tribunal. As he was hospitalised as inpatient for 53 days, we enhance the compensation for extra nourishment to Rs.3,500/-.

8. As far as bystander's expenses is concerned, the Tribunal has granted Rs.1600/- taking the inpatient treatment for 16 days which is not correct. Since he was an inpatient for 53 days, we grant @ Rs.150/- per day which will come to Rs.7,950/-. The same is rounded off to Rs.8,000/-. It is seen that for pain and suffering, the Tribunal has

granted Rs.10,000/-. The appellant was treated in two different spells in two different hospitals. It is clear that the appellant had suffered fracture and various treatment procedures have also been undertaken. He had been walking on crutches for some period. For all these reasons, we grant an amount of Rs.35,000/- for pain and suffering.

9. The appellant was a student in V standard at the time of the accident. It is stated that he lost one year of his studies. The learned counsel for the appellant submits that the same can be reckoned for the purpose of compensation. Since he is a student of V standard, only a notional income can be taken for assessing the compensation for permanent disability. Since the accident is of the year 2000, the notional income is fixed at Rs.2,000/- and the multiplier will be 15 also. Therefore the compensation for permanent disability will be Rs.36,000/- (2000 x 12 x 15 x 10%). We also grant an amount of Rs.5,000/- towards loss of studies for one year.

10. In the light of the disability sustained by him, there will be loss of amenities and enjoyment of life. He has suffered the accident at the young age and he would have lost the pleasures of the childhood

also. Therefore, we grant an amount of Rs.30,000/- towards loss of amenities and enjoyment of life.

11. Accordingly, the total compensation will be in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Expenses for transportation	3500
Expenses for extra nourishment	3500
Damages to clothing	500
Expense for treatment	10250
Expense for bystander	8000
Compensation for pain and suffering	35000
Compensation for loss of amenities	30000
Disability	36000
Loss of studies	5000
Total	131750 (Rupees one lakh thirty one thousand seven hundred fifty only)

12. The amount will carry interest @ 9% per annum from the date of petition. 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. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.