

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 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 919 of 2010 ()

AGAINST THE AWARD IN OPMV 1652/2004 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL,KOZHIKODE DATED 17.7.2009.

APPELLANT/PETITIONER:

HUSSAIN KOYA
AGED 59, MARVA, ELATHOOR.P.O
KOZHIKODE.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS/RESPONDENTS:

1. MOYINKUTTY POCKER
S/O. MOYINKUTTY HAJI, NEAR ABDUL MASJID, ORAVANKARA
KALANAD VILLAGE, KASARAGOD.

2. K.A. MAHIN,
S/O. ABDUL KADER, MADATHIL, KALANAD
KASARAGOD.

3. THE UNITED INDIA INSURANCE CO. LTD.,
VELIMANNA BUILDING, THAMARASSERY, KOZHIKODE.

R,R1 BY ADV. SRI.P.V.KUNHIKRISHNAN
R BY SRI.JOHN JOSEPH VETTIKKAD B/O
R3 BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.919 of 2010

Dated this the 2nd day of March 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor vehicle accident which occurred on 3.4.2004 while he was travelling in a scooter which happened to be hit down by a car. He sustained severe injuries and was taken to Medical College Hospital initially and thereafter at Baby Memorial Hospital.

2. He sustained fracture on left femur (shaft), fracture in neck femur left, fracture on 2.3.4 & 5th ribs (Right side) and lacerated wound on chin. He underwent inpatient treatment for a period 13 days from 3.4.2004 to 15.4.2004 in Baby Memorial Hospital. The application was filed before the Tribunal seeking compensation to the tune of Rs. 3 lakhs. The Tribunal awarded a sum of Rs. 59,500/-. This appeal is filed seeking enhancement of compensation. Learned counsel submits that

the Tribunal has not awarded any amount towards loss of earning and quantum of compensation awarded under various heads are thoroughly inadequate.

3. It is seen that the appellant underwent inpatient treatment for a period of 13 days. The Tribunal awarded a sum of Rs. 40,000/- alone towards treatment expenses, as against claim towards a sum of Rs. 95023/- based on medical bills. The entire claim was not allowed observing that cost of the medicines were also included along with the bills, when separate bills for medicines were produced by the appellant. The bills were for a sum of Rs. 95023/- and having regard to the period of treatment in Baby Memorial Hospital, we are of the view that a sum of Rs. 60,000/- will be awarded towards treatment expenses. Towards bystander expenses, the Tribunal has awarded a sum of Rs. 2,000/- alone. Since the accident occurred in the year 2004, we enhance the same to Rs. 2,600/- reckoning Rs. 200/- per day. The Tribunal has awarded a sum of Rs. 15,000/- towards pain and suffering. It is seen that the appellant has sustained serious injuries on account of fracture of his left femur. The

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inconveniences and discomfort he suffered can be visualised and therefore we award a sum of Rs. 35,000/- towards pain and suffering. We find that he was advised to take rest for a period of three months. Therefore, reckoning a notional income at the rate of Rs. 2000/- per month, we award a sum of Rs. 6,000/- towards loss of earnings. Accordingly, the award passed by the Tribunal is modified.

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount modified.</i>
1	Transport to hospital	750	750
2	Damage to clothing	250	250
3	Treatment expenses	40000	60000
4	Bystander expenses	2000	2600
5	Pain and suffering	15000	35000
6	Loss of amenities	1500	1500
7	Loss of earnings	-	6000
	Total		106100

4. The total compensation will be Rs. 1,06,100/-. The enhanced compensation will carry interest at the rate of 9% from the date of petition in the light of the judgment of the Apex Court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513].

5. The Insurance Company is directed to deposit the entire

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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 allowed accordingly. No cost.

Sd/-
T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge