

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 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

MACA.No. 1521 of 2014 ()

AGAINST THE AWARD IN OPMV 208/2009 of MACT MUVATTUPUZHA
DATED 29-10-2013

APPELLANT(S)/PETITIONER:

THANKACHAN, AGED 42 YEARS
S/O.KUNJU, KANNUMPURATH (KEERUKUNNEL) (H)
VADAKARA KARA, OLIYAPPURAM POST
KOOTHATTUKULAM VILLAGE, ERNAKULAM DISTRICT

BY ADVS.SRI.P.V.SANTHOSH JOSE
SRI.M.G.KARTHIKEYAN
SMT.DIVYA B.NAIR

RESPONDENT(S)/RESPONDENTS:

1. RAJEEV P.N
S/O.NARAYANAN, PATHALIL HOUSE, MUKKADA POST
KANJIRAPPALLY (DRIVER OF THE JEEP.

2. SIJU P.S
S/O.SREEDHARAN, PARISAKKOLAMURIYIL HOUSE
ERATHUVADAKKARA, MANIMALA
KOTTAYAM DIST. 686 001 (OWNER OF THE JEEP)

3. UNITED INDIA INSURANCE CO-LTD
BRANCH OFFICE THOTTUPARAMBIL BUILDING
POST OFFICE JUNCTION, CHANGANACHERRY - 686 101
(INSURER OF THE OFFENDING JEEP REG. NO. KL-03-490)

4. PRADEE
S/O.MADAHAVAN, MULLASSRIL HOUSE, OLIYAPPURAM P.O.
KOOTHATTUKULAM
ERNAKULAM DISTRICT (OWENER CUN DRIVER OF THE
AUTO RIKSHAW REG. NO. KL-17D-2855)

5. THE ORIENTAL INSURANCE COMPANY LTD
BRANCH OFFICE,
EBENEZER GARDEN COCHIN - 682 034(INSURER OF THE
AUTO RIKSHAW BEARING REG. NO. KL 17D-2855)

R-R5 BY ADV. SRI.P.JACOB MATHEW
R3 BY ADV. SRI.T.V.AJAYAKUMAR
R BY SRI.JOHN JOSEPH VETTIKAD
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1521 of 2014

Dated this the 11th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The petitioner, who is a daily labourer, was injured in an accident which occurred on 06.12.2007 at about 11.10 a.m. He was travelling in an autorickshaw bearing Reg.No.KL-17/D 2855 from Sabarimala to Koothattukulam through Erumeli-Pambavali public road. The offending vehicle is a jeep bearing Reg.No.KL-3/C 490 and the same hit against the autorickshaw at a place called Chembakappara bhagam. He sustained serious injuries in the accident. An amount of Rs.3,97,968/- has been granted as compensation.

2. The learned counsel for the appellant submitted that even though before the Tribunal evidence was let in to show that he had sustained 32% disability as per Ext.A10 disability certificate, the Tribunal has assessed it only at 20%. It is

submitted that pursuant to the order passed by this Court, a Medical Board has examined him and the certificate issued by the Medical Board has been produced as Annexure-A along with I.A.No.146 of 2015, wherein 40% disability has been certified. Therefore it is submitted that compensation will have to be assessed based on the percentage of the functional disability due to the physical disability he has suffered.

3. The learned counsel for the 3rd respondent Insurance Company submitted that adequate compensation has been awarded by the Tribunal.

4. We find from paragraph 10 of the award that, the details of injuries have been given in the following manner which are covered by Ext.A11 summary.

“1. Type III B open segmental fracture right tibia.

2. Tibial plateau fracture right.

3. Supra condylar fracture right femur.

4. Frac distal end of radius right with ulnar styloid fracture right.”

5. The inpatient treatment was for a period of 203 days in different hospitals including Medical College Hospital,

Kottayam. The Tribunal has assessed the monthly income notionally at Rs.3,000/- as against the claim of Rs.6,000/-.

6. The appellant was engaged as a coolie worker on the date of the accident. The accident was of the year 2007. Therefore we are of the view that the amount fixed at Rs.3,000/- as the monthly income, cannot be justified. The Apex Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.** [2011 13 SCC 236] has held that where the claim is not an exorbitant one, the Tribunal and this Court can arrive at a reasonable figure. Therefore we adopt the same view in this case also for assessing the compensation. Accordingly we fix Rs.4,500/- as the monthly income.

7. The compensation assessed by the Tribunal is evident from the table given in para.13. We reproduce the same hereunder:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earnings	Rs. 36,000.00
2	Pain and sufferings	Rs. 40,000.00
3	Loss of amenities	Rs. 30,000.00
4	Bystander expenses	Rs. 20,300.00
5	Extra nourishment charges	Rs. 10,000.00
6	Transportation expenses	Rs. 3,500.00

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
7	Medical treatment charges	Rs. 1,42,968.00
8	Compensation for permanent disability	Rs. 1,15,200.00
	Total	Rs. 3,97,968.00

In Ext.A10 disability certificate the Doctor has noticed the following after medical examination as well as radiological examination.

“Right knee almost ankylosed - 16%
 Right ankle plantar flexion and dorsiflexion are reduced from 90 degree to 125 degree - 5%
 Chronic osteomyelitis of the right tibia.
 Right wrist is deformed palmar flexion and dorsiflexion are reduced to 45 degrees. - 7%
 Supination and pronation possible 50% of normal - 1%
 Shortening of 2 inches and limping right side - 3%
 X-ray right femur taken on 18.07.11 shows fracture united.
 X-ray right tibia shows fracture tibia malunited and fracture fibula also malunited.
 Knee joint space is reduced irregular and deformed.
 X-ray right wrist shows fracture radius malunited.
 The percentage of disability with respect to whole body comes to 32% according to McBride Scale, permanent in nature.”

It will show that his right knee has almost been ankylosed and there is shortening of 2 inches and limping right side. The right wrist is also deformed. There is deformation of knee joint space also.

8. We have gone through the evidence of PW1 doctor. Going by the proof affidavit, in para.2 what has been stated is

that the appellant is having difficulty to walk without support. According to him, the disabilities are of permanent nature. This will also support the case of the appellant that there will be functional disability to carry on his occupation as a daily labourer.

9. In Annexure-A certificate produced before this Court, the Medical Board found that there is non union of malunited tibia(Rt), shortening as well as ankylosis. Being a coolie, it can be easily assessed that he will have functional disability in the light of the permanent disability he has suffered. Therefore the view taken by the Tribunal that the disability will be only 20%, cannot be sustained. We accept the disability at 40% in tune with Annexure-A certificate issued by the Medical Board. The appellant was treated as an inpatient in different hospitals for a period of 203 days. The Tribunal has granted only a sum of Rs.40,000/- towards pain and suffering. In the light of the seriousness of the injuries sustained and the treatment undergone including wound debridement, external fixator for right leg and BE cast for distal end of radius, as evident from Ext.A10 certificate, it will be reasonable to award an amount of

Rs.75,000/- towards pain and suffering. As far as the partial loss of earning is concerned, the Tribunal has granted amount only for one year and we adopt the same method and we reckon it for one year also. We grant Rs.54,000/- towards partial loss of earning. For bystander's expenses, the Tribunal granted Rs.20,300/-. Being the accident of the year 2007, we award an amount @ Rs.200/- per day for 203 days for bystander's expenses, which will come to Rs.40,600/-. As far as the compensation for permanent disability is concerned, it will be Rs.3,45,600/- ($\text{Rs.}4500 \times 12 \times 16 \times 40 / 100$). Lastly in the light of the disability suffered by him, there will be loss of enjoyment of life and loss of amenities in life apart from shortening of expectation of life. He will not be able to carry on his normal avocations in personal life including travelling and other aspects of life. Therefore, reasonable amount will have to be awarded towards the head 'loss of amenities of life and loss of enjoyment in life coupled with shortening expectation of life' and we grant an amount of Rs.80,000/- under the same head.

10. Therefore the total compensation is computed in the following manner:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earnings	Rs. 54,000.00
2	Pain and sufferings	Rs. 75,000.00
3	Loss of amenities	Rs. 30,000.00
4	Bystander expenses	Rs. 40,600.00
5	Extra nourishment charges	Rs. 10,000.00
6	Transportation expenses	Rs. 3,500.00
7	Medical treatment charges	Rs. 1,42,968.00
8	Compensation for permanent disability	Rs. 3,45,600.00
9	Los of amenities and loss of enjoyment of life coupled with shortening of expectation	Rs. 80,000.00
	Total	Rs. 7,81,668.00 round off to Rs.7,81,670.00

(Rupees Seven lakhs eighty one thousand six hundred and seventy only)

The appellant will be entitled to a total compensation of Rs.7,81,670/- (Rupees Seven lakhs eighty one thousand six hundred and seventy only), and the enhanced amount will carry interest @9% per annum from the date of petition. The respondent is given 3 months' time to deposit the amount.

The appeal is allowed to the above extent. No costs in the appeal.

The appellant had limited his claim to Rs.7 lakhs and in the

light of the judgment of the Apex Court in **Nagappa v. Gurudayal Singh** [2003 1 KLT 115] and **Rajesh v Rajbir Singh** [2013(3) KLT 89(S.C)], even though the claim will be for a particular sum, there is no restriction for this Court to arrive at just and fair compensation. Since the court fee is paid only for Rs.7 lakhs, the claimant will remit the additional court fee for the amount awarded by this Court.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge