

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

MACA.No. 2218 of 2011 ()

AGAINST THE AWARD IN OPMV 1270/2008 of M.A.C.T., KOLLAM DATED 29-01-2011
APPELLANT(S)/2ND PETITIONER:

ANVARSHA
S/O.ASHRAF, HARSHAD MANZIL, MUZHANGODI MURI
KALLELIBHAGOM VILLAGE, KOLLAM.

BY ADV. SRI.PRATHEESH.P

RESPONDENT(S)/3RD RESPONDENT:

THE DIVISIONAL MANAGER
THE NATIONAL INSURANCE CO.LTD, KOLLAM-691001.

R1 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2218 of 2011

Dated this the 19th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellant aggrieved by the inadequacy of compensation. The accident occurred on 28.1.2008 at about 12.30 p.m. when the appellant was travelling in a motor cycle bearing Reg. No.KL 1R 2884 as a pillion rider. When it reached near the Plavila Junction, the offending vehicle, viz. a goods autorickshaw bearing Reg. No.KL KL 2R 4794 hit against the motor cycle which is the version given by the appellant. But the Tribunal found that there is contributory negligence and it was apportioned between the driver of the motor cycle and the driver of the offending vehicle as 60 : 40. Learned counsel for the appellant submits that the findings are totally erroneous.

2. Learned counsel for the insurance company submitted that the

scene mahazar was produced by the appellant and no other evidence was adduced. Therefore, the entries were relied upon by the Tribunal. It showed that the motor cycle was on the wrong side and the autorickshaw was proceeding from south to north in the correct side.

3. Going by the discussion in paragraph 7 of the award, it is seen that as per Ext.A3 scene mahazar the place of occurrence is at a spot 95 cm east from the western tar end and at the place of occurrence the tarred road has a width of 3m 90 cm. The Tribunal found that even if the precise spot of accident may not be the same, in a head on collision composite negligence may be there. There was no other evidence before the Tribunal.

4. The appellant has impleaded the owner, driver and insurer of the offending vehicle alone. Of course, he was a pillion rider also.

5. Even though the Tribunal fixed contributory negligence in the ratio of 60 :40, we feel that the same can be fixed at equally between the two vehicles at 50 : 50.

6. The appellant sustained Type III A open ® femur supracondylar fracture with intercondylar Extension with fracture

patella. He underwent the following treatment:

“Wound debridement + spanning ex fix ® knee on 28.1.2008

Wound debridement ® knee on 31.1.08, 2.2.2008 and 5.2.2008

ORIF ® femur with LCP + bone grafting on 21.2.08

Post POP physio started.”

Exts.A8 and A9 are the discharge cards and the period of treatment is initially from 28.1.2008 to 11.3.2008 and later on he was admitted on 15.3.2008 and discharged on 28.3.2008. He was aged 17 years at the time of accident. The Tribunal therefore fixed the income at Rs.15,000/- annually and adopting the proper multiplier, arrived at an amount of Rs.40,500/- as compensation for permanent disability. Even though learned counsel for the appellant submitted that the monthly income could have been taken at a higher rate, being a minor, we find no reason to disagree with the award of the Tribunal on this score. But as regards compensation under other heads, we are of the view that it requires modification.

7. As far as bystander's expenses are concerned, only a sum of Rs.5,700/- has been granted by the Tribunal. We refix the amount at

the rate of Rs.200/- per day and the total amount will come to Rs.11,400/-. For transport to hospital, the Tribunal granted Rs.3,000/- which we enhance to Rs.5,000/- and for extra nourishment we grant an amount of Rs.2,000/- more making a total amount of Rs.4,000/-. For pain and suffering, the Tribunal granted a sum of Rs.25,000/-. It is seen that the appellant was under continuous treatment for months together and the injuries were also serious. Therefore, we award a sum of Rs.50,000/- as compensation for pain and suffering. Even though learned counsel for the appellant submitted that the disability is more than 15%, in the absence of a certificate, we will not be justified in taking the percentage of disability on a higher side. In the light of the disability sustained, the appellant would be deprived of the amenities and enjoyment in life to some extent for which he will have to be granted adequate compensation. Therefore, we grant an amount of Rs.30,000/- towards compensation for loss of amenities in life.

Therefore, the total compensation will be recomputed as follows:

<i>Head of claim</i>	<i>amount awarded by the Tribunal (Rs)</i>	<i>modified award passed by this Court (Rs)</i>
Transport to hospital	3000	5000
Extra nourishment	2000	4000

<i>Head of claim</i>	<i>amount awarded by the Tribunal (Rs)</i>	<i>modified award passed by this Court (Rs)</i>
Damage to clothing	500	500
Bystander's expenses	5700	11400
Medical expenses	136544	136544
Pain and suffering	25000	50000
Continuing permanent disability	40500	40500
Loss of amenities in life	13500	30000
Total		277944

The appellant will be entitled to 50% of the total compensation along with interest. The award of the Tribunal is accordingly modified. The Tribunal has granted interest only at 7.5% for the amount awarded which we enhance to 9% for the entire amount, from the date of petition. The insurance company is directed to deposit half of the total amount of compensation along with the interest, less the amount already deposited before the Tribunal.

The appeal is allowed as above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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