

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

MACA.No. 2248 of 2011 ()

AGAINST THE AWARD IN OPMV 604/2010 of M.A.C.T., KOZHIKODE DATED 27-08-2011
APPELLANT(S)/PETITIONER

P.DINESAN
S/O.SANKARAN, RESIDING AT PONNARANKANDY HOUSE
P.O.ELATHUR, CHETTIKULAM, KOZHIKODE.

BY ADVS.SRI.AVM.SALAHUDIN
SMT.P.Y.SHEHEERA

RESPONDENT(S)/RESPONDENTS:

1. HASHIMT.
HASHIM T, S/O.V.P.ABOOBACKER
RESIDING AT THEKKANMARAKATH HOUSE
PAZHAYANGADI P.O.SREEKANDAPURAM, TALIPARAMBA, KANNUR.

2. RELIANCE GENERAL INSURANCE COMPANY LTD
ADITYA TOWERS, THAVAKKARA ROAD, OPP.RTO OFFICE
COLLECTORATE, KANNUR.

R2 BY ADV. SRI.GEORGE CHERIAN(B/O)
R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.**

M.A.C.A.No.2248 of 2011

Dated this the 6th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is the appellant. He was aged 38 years at the time of accident and is a permanent employee under the Kerala State Electricity Board, working as Lineman. He was having a monthly income of Rs.18,630/- at the time of accident. The accident occurred on 6.11.2009 at about 9.45 p.m. He was crossing the road at Chettikulam and was hit by a car bearing Reg. No.KL-59-A 3838. He was immediately taken to Medical College Hospital, Kozhikode and thereafter was treated at District Co-operative Hospital, Kozhikode.

2. The evidence shows that the appellant had sustained comminuted tibial condyle fracture left leg with fracture upper 1/3rd left fibula. Ext.A2 is the copy of the wound certificate. He was having head injury also, going by the treatment records. He was treated in the hospital on different occasions and the details are given below:

“15.11.2009 to 21.11.2009 (Ext.A4)
14.12.2009 to 19.12.2009 (Ext.A3)
18.1.2010 to 3.2.2010
22.12.2010 to 26.6.2010 (Ext.A8 series)”

The Tribunal has granted a total compensation of Rs.1,90,795/-.

3. Learned counsel for the appellant submitted that the Tribunal erred in granting only an amount of Rs.49,920/- for continuing permanent disability in spite of the fact that going by Ext.C1 certificate issued by the Medical Board showing that the permanent disability suffered by the appellant is 26%. It is submitted that by taking the view that the appellant has not lost the job, the Tribunal went on to assess the compensation only for the post retirement period by fixing Rs.2,000/- as the monthly income after retirement, and by adopting 8 as the multiplier. It is submitted by the learned counsel for the appellant Shri Salahuddin that the proper multiplier will be 15.

4. We find that the method adopted by the Tribunal is not correct. The compensation will have to be assessed as on the date of accident when he sustained the injuries. Therefore, the multiplier will have to be reckoned taking the date of accident and the age as on the said date

and not for a future period after retirement.

5. The monthly income of the appellant as on the date of accident is Rs.18,360/- and learned counsel submitted that the physical disability itself is liable to be compensated. He relied upon the decision reported in **S. Perumal v. K. Ambika** (2015 ACJ 1117) wherein, after referring to the injuries sustained, an amount of Rs.2 Lakhs has been granted as compensation for physical disability. There cannot be any doubt that the injury itself is liable to be compensated and the principle is well settled that even if there is no loss of earning power, the permanent disability suffered by a claimant will have to be compensated. For this, the multiplier method is the one that has been accepted as well established principle, going by the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC) and the subsequent judgments following it.

6. But herein, learned counsel for the insurance company submitted that the percentage of disability cannot be reckoned as for the whole body. The injury has been sustained only to the leg. The question will be whether, the entire percentage of disability should be

taken for assessing the compensation. The total claim raised by the appellant is Rs.6 Lakhs. After considering various aspects including the nature of injury sustained, we are of the view that for the purpose of granting just and fair compensation, the percentage of disability can be taken as 12 and after adopting the multiplier of 15 and also by taking the monthly income as Rs.18,360/-, the amount can be arrived at. We are also of the view that the appellant is entitled for more amount towards pain and suffering and loss of amenities. The Tribunal has granted Rs.6,000/- for loss of amenities and Rs.18,000/- for pain and suffering. He was in the hospital for different occasions and therefore a reasonable amount will have to be granted for pain and suffering along with adequate compensation for bystander's expenses and also for extra nourishment.

Therefore, we recompute the compensation in the following manner:

<i>Head of claim</i>	<i>Amount awarded</i>
Bystander's expenses	31 x Rs.300/- = 9300
Transport to hospital	1500
Extra nourishment	1500

<i>Head of claim</i>	<i>Amount awarded</i>
Loss of leave (partial loss of earnings)	27945
Treatment expenses	86930
Pain and suffering	30000
Permanent disability	18360 x 12 x 15 x 12/100 396576
Loss of amenities	35000
Damage to clothing	500
Total	589251(round off to Rs.5,89,250/-)

(Rupees Five Lakhs Eighty-nine thousand two hundred and fifty only)

The enhanced amount will carry interest at the rate of 9% per cent per annum from the date of filing of the petition. We confirm the finding that the insurance company is liable to satisfy the award amount and the entire amount, less the amount already paid along with interest, will be deposited within three months.

The appeal is allowed as above. The parties shall suffer their costs in this appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

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