

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

MACA.No.35 of 2008

(AGAINST THE AWARD DATED 11-05-2007 IN OPMV.NO.1187/2003
OF MACT, VADAKARA)

APPELLANT/PETITIONER:

P.SANTHARAM,
ADVOCATE,
S/O. APPU NAIR, AGED 37 YEARS,
SREE VALSAM, ULLIYERI AMSOM DESOM,
P.O.ULLIYERI,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS/RESPONDENTS:

1. K.RAVEENDRAN,
S/O. KUNHIRAMAN NAIR,
KARINGATTATH HOUSE, P.O.ORAVIL, NADUVANNUR-673 614.

2. THE UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE II, IIND FLOOR, SEEMA TOWERS,
BANK ROAD, MAVOOR ROAD JUNCTION, CALICUT-673 001.

R1 BY ADV. SRI.V.N.RAMESAN NAMBISAN

R2 BY ADV. SMT.T.C.SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 15-10-2015, THE COURT ON 22-12-2015 DELIVERED THE FOLLOWING:

MACA35/2008

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.A23 - MEDICAL BILL ISSUED FROM ARSHAS AYURVEDICS &
 HOSPITAL PRIVATE LIMITED DATED 13.5.2007.

- EXT.A24 - MEDICAL BILL ISSUED FROM ARSHAS AYURVEDICS &
 HOSPITAL PRIVATE LIMITED DATED 3.5.2008.

- EXT.A25 - MEDICAL BILL ISSUED FROM ARSHAS AYURVEDICS &
 HOSPITAL PRIVATE LIMITED DATED 15.5.2009.

- EXT.A26 - MEDICAL BILL ISSUED FROM ARSHAS AYURVEDICS &
 HOSPITAL PRIVATE LIMITED DATED 5.5.2010.

-TRUE COPY-

PS TO JUDGE

“CR”

Thottathil B.Radhakrishnan

&

Babu Mathew P. Joseph, JJ.

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M.A.C.A.No.35 of 2008

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Dated this the 22nd day of December, 2015

Judgment

Thottathil B.Radhakrishnan, J.

1.This appeal is by the claimant challenging the quantum of compensation awarded to him by the Motor Accidents Claims Tribunal.

2.The claimant, a practising advocate, who deposed that he was then earning around Rs.6,000/- per month, was injured as a result of a motor accident when a tempo trax driven by the first respondent knocked down the motorcycle on which the claimant was riding through a public road on

8.9.2001. The claimant testified as P.W.1 and tendered documentary evidence as Exts.A1 to A22. Ext.X1 certificate of disability issued by the Medical Board, Medical College Hospital, evidenced that the claimant's permanent disability is 27%. No contra evidence was tendered by either among the respondents. The Tribunal held that the first respondent was negligent. It did not find any contributory negligence on the claimant. The claimant was awarded a total amount of Rs.3,70,416/- as compensation with interest at 6% per annum from the date of the petition till payment.

3. When this appeal came up for consideration for admission on 10.1.2008, it was minuted as follows:

“Admit only regarding the question of reimbursement of medical bills.

Issue notice. Records are called for.”

4. Pending the appeal, claimant filed I.A.No.1639 of 2012 seeking admission of additional evidence, which are four bills/receipts towards treatment, issued after the Tribunal passed the award on 11.5.2007.

5. The learned counsel for the appellant argued that the compensation awarded by the Tribunal is grossly inadequate as against the total compensation of Rs.15 lakhs claimed. Reference was made to the entire documentary evidence and the testimony of P.W.1, as also Ext.X1 certificate of permanent disability. Making reference to the precedent in Velunni v. Vellakutty [1989 (2) KLT 227], it was argued that, sitting in appeal, this Court is empowered to pass such order or award, as the case may require and this power, in so far as it relates to appeals against awards of Motor Accidents Claims Tribunal, calls to be exercised in the light of the ratio of Nagappa v. Gurudaya Singh [AIR 2003 SC 674] laying down, inter alia, that the award need not be limited to amounts

specified in the claim petition and the only embargo is that what should be awarded should be "Just" compensation and that there is no other limitation or restriction on the Tribunal's power to award just compensation. In support of the application seeking admission of additional evidence, it was argued that the documents sought to be admitted in evidence were not available with the claimant when the matter was pending before the Tribunal since they were issued only after the trial concluded and also relate to periods of treatment undergone by the claimant from year to year even after the decision of the Tribunal was rendered. It is pointed out that the documents sought to be admitted in evidence are those which would clearly show that as a result of the accident, the claimant has to undergo periodical recurring treatment for continuing the rehabilitation procedure which is required as a direct consequence of the injuries suffered by him as a result of the accident. Faced with the aforequoted order minuted on 10.1.2008 at the stage of admission, the learned counsel for the

appellant referred to the judgment of a learned single Judge of this Court in Sekharan v. Meenakshi [1965 KLT 940] and argued that in this Court there is no general practice of admitting appeals in part or only on some of the grounds raised in the memorandum of appeal and that it is clear from Rules 11 and 12 of Order XLI of the Code of Civil Procedure that an appeal has to be admitted or dismissed under Rule 11 or Rule 12 only as a whole and not in parts.

6. Per contra, the learned counsel appearing for the respondents argued that the compensation awarded by the Tribunal is just and reasonable and there is no ground to enhance it. It is further argued that having regard to the limit to which the appeal has been admitted as per the order dated 10.1.2008, it is not open to the appellant to argue on any other point. In answer to the application seeking admission of additional evidence, it was argued that the documents sought to be admitted relate to periods after the Tribunal's award and cannot, therefore, have any

reasonable nexus to the date of accident.

7.As noted by the Division Bench of this Court in New India Assurance Co. Ltd. v. Pathumma [1986 KLT 553], an appeal against the award of the Tribunal is essentially one to which the guiding principles laid down in National Telephone Company Limited (In Liquidation) and another v. His Majesty's Postmaster-General [1913 AC 546]; Secy. Of State v. Rama Rao [AIR 1916 PC 21], Rangoon Botatung Co. v. Collector, Rangoon [39 I.A.197], R.M.A.R.A.Adaikapao Chettiar and another v. R. Chandrasekhara Thevar [AIR 1948 PC 12] and N.S.Thread Co. v. James Chadwick & Bros. [AIR 1953 SC 357] and Collector, Varanasi v. Gauri Shanker [AIR 1968 SC 384] would apply and therefore, when such an appeal is to lie before this Court, it will be governed by the provisions of Order XLI of the CPC. In Velunni (supra), this position was reiterated making reference to, among other precedents, South Asia Industries Pvt. Ltd. v. Sarup Singh [AIR 1965 SC 1442]. It was held that where a statute provides right of

appeal to an established court without anything in that statute indicating the manner in which the appeal is to be disposed of, the right of appeal will carry with it the applicability of the rules of practice and procedure of that court with regard to its power to entertain the appeal and its disposal, as well as the manner of exercise of that jurisdiction and the incidents thereof. Those precedents read together, lay down, inter alia, that an appeal from an award of a Tribunal to the High Court will be governed by the provisions of Order XLI of CPC. While Velunni (supra) specifically dealt with and held the availability of Order XLI Rule 33 for the appellate court dealing with a motor accident claim to mould the relief, Pathumma (supra) concluded that the High Court has the power to scrutinise an appeal against an award of the Tribunal at the threshold, under Rule 11 of Order XLI CPC, to satisfy itself as to whether there is a prima facie case for admission of the appeal. A survey of the provisions of Order XLI CPC and the purposes for which that bunch of Rules are

made to regulate the appeals, read in the light of the reasoning that led to the conclusions in Velunni (supra) and the principles enunciated by the House of Lords, the Privy Council and the Hon'ble Supreme Court of India in the different precedents referred to in Pathumma and Velunni unequivocally show that an appeal against an award of the Motor Accidents Claims Tribunal will be governed by the provisions of Order XLI. We concur with such reasoning and follow the ratio of Pathumma and Velunni in this regard.

8. Having held that the provisions of Order XLI apply to the appeal in hand, the next question that arises for decision is as to what is the effect of the noting made in the order admitting the appeal to file, that is to say, "Admit only regarding the question of reimbursement of medical bills." We proceed to answer this issue.

9. The learned counsel for the appellant referred to Sekharan (supra) rendered by a learned single Judge of this Court relying on Rekha Thakur v.

Ramanadan Rai [AIR 1936 Pat. 7] and Vattipalle Eswariah v. Vattipalle Rameswarayya [AIR 1940 Mad. 483]. In Sekharan, reference was also made to the decision by the Travancore-Cochin High Court in Lekshmi Kutty Pillai v. Velayudhan Pillai [ILR 1952 TC 385]. That precedent is also reported as AIR 1953 TC 247 showing the name of the case as Ponnamma v. Padmanabha. That decision was rendered following the decisions in Lakhi Narain v. Sri Ram Chandra [14 Cal.L.J.146], Janak Nath v. Prabasini Dassee [ILR 43 Cal.178] and Rekha Thakur v. Ramnandan Rai [ILR 15 Pat.96]. As pointed out by the learned counsel for the appellant, Sekharan (supra) was rendered holding that in this Court there is no general practice of admitting appeals in part or only on some of the grounds raised in the memorandum of appeal and in terms of the provisions of Order XLI Rules 11 and 12, it is clear that an appeal has to be admitted or dismissed at the threshold only as a whole and not in parts. This principle settled through the judgment in Sekharan (supra), rendered by this Court in 1965 has not been

affected by any of the amendments made thereafter to the CPC. *Lekshmi Kutty Pillai (Ponnamma)* (supra) was rendered by the Travancore-Cochin High Court in a second appeal. Therefore, the provisions of Order XLII which made the Rules of Order XLI applicable to appeals from appellate decrees were also pointedly within the zone of judicial determination of the issues that arose in that case. *Lekshmi Kutty Pillai (Ponnamma)* (supra) also deals with different other decisions, including certain conflicts which were noticeable. In that case, the High Court raised the question as to whether it is competent for the Judge admitting the appeal to limit its scope and whether he has done so in that case. The High Court referred Rules 11 and 21(1) of Order XLI CPC. Reference was also made to Order XLII Rule 1 which provides that the Rules of Order XLI shall apply so far as may be, to appeals from appellate decrees. Considering those relevant provisions, the Travancore-Cochin High Court stated in *Lekshmi Kutty Pillai (Ponnamma)* as follows:

“It is clear from the above provisions that it is competent for the appellate court to dismiss the appeal without even issuing notice to the respondent. (O. 41 R.11). If the Court does not so dismiss, it has to fix a day for hearing “the appeal”. There is nothing in the rules to indicate that the Court is entitled to admit the appeal piece-meal. If however at the time of admission the appellant abandons any one or more of the grounds taken in the memorandum and confines the appeal to some of the grounds alone, it may be open to the court to make a record of that fact which may have the effect of limiting the scope of “the appeal”, and the day to be fixed under O. 41, R. 12, would be to hear the appeal as so limited and not as originally presented. In such a case there is no admission of the appeal in part. The question arose for the first time in the Calcutta High Court in - 'Lakhi Narain v. Sri Ram Chandra', 14 Cal L.J.146 (A), and it was held that it was beyond the competence of a court of appeal to restrict an appeal to some of the grounds. This view was followed by the same Court in a later case in - 'Janki Nath v. Prabasini Dassee', AIR 1916 Cal

741 (B). The Patna High Court has taken the same view in - 'Rekha Thakur v. Ramanandan Rai', AIR 1936 Pat 7 (C). In this case the learned Judges approved of the Court taking a note of an agreement by the appellant to confine the appeal to some of the grounds, either because the other grounds are deliberately given up or because they are thought to be unfit to be urged before court. A Full Bench of the Bombay High Court has also taken the same view in - 'Krishnaji Shrinivas v. Madhusa Appansa', AIR 1934 Bom 207 (F.B.) (D), but has introduced a modification in that an appeal which comprises of parts which are severable it can be admitted as regards one or more of the parts & dismissed as regards the rest. Such being possible in the decree in appeal it is regarded as permissible even at the time of admission. This last view however is not accepted by the Madras High Court in - 'Eswariah v. Rameswarayya', (AIR 1940 Madras 483] (F.B.) (E). A Full Bench of that Court held that the Court had no jurisdiction to admit an appeal in part and dismiss it in part even if the appeal consists of distinct and severable parts. This conflict of view between the Madras and the Bombay High Courts does not fall to be

resolved in this case as the claim here is one and entire. Having been admitted to hearing, the appeal as presented including all the grounds taken would be open for argument even if at the time of admission it has been limited to a particular ground or grounds. In this case, the note made by the judge at the time of admission does not purport to limit nor has it the effect of limiting the scope of the appeal. The note made by the Judge has only the object and effect of serving as a record for future reference, and there has not been an admission of the appeal in part.”

(Quoted from AIR 1953 TC 247.)

10. In Kasi Viswanathan Chettiar v. Chinnaiah Chettiar [1977 (II) MLJ 524], it was held by the Madras High Court that when an appeal comes up for admission under Rule 11 of Order XLI, only two courses are open, namely, to dismiss or admit the appeal as a whole. The Orissa High Court dealt with a second appeal in Managing Committee v. Kanduri Charan Jena [59 (1985) CLT 362]. It was held that it is not open to a Judge hearing an appeal under Order XLI Rule 11, to admit that

appeal and at the same time restrict the grounds on which the appeal is to be heard. It also held that the provisions in sub-sections 4 and 5 of Section 100 CPC are clearly indicative of the position that the power of the High Court to hear the appeal on any other substantial question of law, though not formulated by it, is not taken away and the Court may hear the appeal on other grounds if it is satisfied that the case involves such questions. These principles are essentially indicators to the predominant view that an appeal cannot be admitted in part or dismissed piecemeal at the stage of consideration for admission under Order XLI Rule 11 of CPC. We came across the decision of the Division Bench of the Mysore High Court in Ambamma v. Uddiah [AIR 1952 Mysore 65] holding that when the points needing consideration are specified at the time of admission of appeal the appellant must confine arguments to those points only, at the hearing, and cannot traverse others which may arise in the appeal. That was a case of a second appeal. As held in Kasi Viswanathan Chettiar (supra) and

Kanduri Charan Jena (supra), even in the case of second appeals, the admission of the second appeal on the basis of substantial question of law formulated by the court at the time of admission does not preclude the appellant from urging the court to formulate further substantial questions of law at the final hearing of the second appeal when such grounds do arise for consideration. We further hold that the course of justice cannot be blocked by nipping the grounds of appeal at the threshold unless there is clear authorization for the appellate Court to do so at the stage of considering an appeal for admission. We, therefore, respectfully disagree with such ratio of Ambammal (supra).

11. The result of the aforesaid discussions is that no restriction can be imposed by the appellate Court in terms of Order XLI Rule 11 CPC restricting the appeal only to a part of the grounds raised in the appeal. We also recall in this context that the provisions of Order XLI enjoin authority on the Court to grant leave and

permit the appellant to raise further grounds of appeal even after an appeal is instituted, and even admitted. We are in complete agreement with the decision rendered by Subramonia Iyer J. of the Travancore-Cochin High Court in *Lekshmi Kutty Pillai (Ponnamma) (supra)* which is quoted above and would reiterate the words of that learned Judge that "The note made by the Judge has only the object and effect of serving as a record for future reference, and there has not been an admission of the appeal in part." Such statement applies in full vigor to any restriction imposed at the time of admission of this appeal as noted above. Hence, we hold that the appellant is entitled to urge at the final hearing of this appeal, all the grounds relatable to the quantum of compensation awarded to him. We, therefore, proceed to consider the appeal on all grounds as are available to the claimant, as against the impugned award, on the quantum of compensation.

12. In Nagappa v. Gurudaya Singh [AIR 2003 SC 674], the Hon'ble Supreme Court held that there

is no bar for the Claims Tribunal to award compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. It was further held that it is for the Tribunal to determine just compensation from the evidence brought on record despite the fact that the claimant has not specifically stated the different amounts claimed under different heads of claim. If evidence on record justifies passing of such award, the claim cannot be rejected solely on the ground that the claimant has restricted his claim. Where there is evidence on record justifying the enhanced compensation for the medical treatment which is required because of the injury caused to a claimant due to the accident, there is no reason why that question should not be considered since it is not inconsistent with the cause of action on the basis of which the claim petition was filed. In Sheikhupura Transport Co. Ltd. v. Northern Indian Transport Insurance Co. [AIR 1971 SC 1624], the Apex Court held, inter alia, that the

pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately, but must necessarily be an estimate or even partly a conjecture. It was further held therein that the determination of the question of compensation depends on several imponderables and in the assessment of the imponderables, there is likely to be a margin of error. In Nagappa (supra), the Apex Court approved the decision of the Orissa High court in Mulla Md. Abdul Wahib v. Abdul Rahim and another [1994 ACJ 348] which held, inter alia, that the expression 'just compensation' would obviously mean that it is fair, moderate and reasonable and awardable in the proved circumstances of a particular case and the expression 'which appears to it to be just' vests a wide discretion in the Tribunal in the matter of determining the compensation. It was thus held that there are no fetters on the power of the Tribunal to award compensation in excess of the amount which is claimed in the application. In Nagappa, it was further held that the Motor Vehicles Act does not provide for

passing any further award after the final award is passed and therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalisation of the compensation proceedings. It was laid down that therefore, the only alternative is that at the time of passing of final award, the Tribunal or Court should consider such eventuality and fix compensation accordingly. It was so stated after noticing that no one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses and that future medical expenses required to be incurred can be determined only on the basis of fair guess-work after taking into account increase in the cost of medical treatment. In Laxman v. Oriental Insurance Co. Ltd. [(2011) 10 SCC 756], the Apex Court relied on and followed, among other precedents, R.D.Hattangadi v. Pest Control (I) (P) Ltd. [(1995) 1 SCC 551] and Raj Kumar v. Ajay Kumar

[(2011) 1 SCC 343] to hold that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a normal life and enjoy amenities, which that person would have enjoyed but for the disability caused due to the accident. Taking cue from Raj Kumar's case, in Laxman (supra), the Apex Court enumerated the following to decide whether the claimant was entitled to enhanced compensation: (i) Loss of earning and other gains due to the accident; (ii) Loss of future earning on account of the disability; (iii) Expenses for future treatment; (iv) Compensation for pain, suffering and trauma caused due to the accident; (v) Loss of amenities including loss of the prospects of marriage; and (vi) Loss of expectation of life.

13. Now, we proceed to analyze the materials on

record and the findings in the impugned Award, on the quantum of compensation, to consider as to whether the amount awarded by the Tribunal is just and reasonable. The claimant tendered oral evidence as P.W.1. Exts.A1 to A22 were produced by him and identified by him in court. They were marked. Ext.X1 is the certificate of permanent disability. There is no contra evidence. No challenge was levied to the documentary evidence during the course of cross examination of P.W.1. Exts.A23 to A26 are admitted as additional evidence in this appeal as per the order allowing I.A.No.1639 of 2012.

14.The Tribunal awarded an amount of Rs.30,000/- towards pain and suffering, Rs.10,000/- towards mental shock and inconvenience, Rs.3,600/- towards hospital expenses including for bystander and extra-nourishment and Rs.4,000/- towards transport to different hospitals. As against the plea of the claimant that his monthly income was Rs.6,000/-, the Tribunal took it as Rs.5,000/- and awarded Rs.25,000/- as total loss of income

for a period of five months during which the claimant could be taken as having been unable to work. An amount of Rs.2,75,400/- was awarded towards loss of future earnings on account of the permanent disability. An amount of Rs.22,416/- was awarded towards expenses for treatment on the basis of the bills. Adding up those components, only a total amount of Rs.3,70,416/- was found due. The Tribunal also awarded interest on the said compensation amount at 6% per annum from the date of the petition.

15. Perusing Ext.A20 series, it is noted that an amount of Rs.125/- was not given credit to by the Tribunal on the ground that it is room rent. It is seen from the records that it is actually a receipt for payment towards OP consultation. Another amount of Rs.250/- was refused to be reckoned by the Tribunal on the ground that the claimant's name does not figure in the evidence tendered. That is also not correct as is seen from that document. Similarly, an amount of Rs.15,125/- was not treated as expended on the

ground that the calculation of that amount was shown on the reverse of a sheet of paper with the letterhead of Arsha Ayurveda Hospital without any signature. On examining Ext.A20 series, it is seen that what appears to be on the reverse of such a paper may be only a draft and the original bill is also produced in the letterhead of Arsha Ayurveda Hospital with the same date and number and also with the signature of the authority of the hospital. Therefore, the learned Tribunal erred in refusing to grant a total amount of Rs.15,500/- on the basis of these three materials. We, therefore, award an additional amount of Rs.15,500/- towards medical treatment on the basis of the documents evidenced by Ext.A20 series.

16.It is not in dispute that the accident was on 8.9.2001. On that day itself, the claimant underwent a CT scan of head and on 10.9.2001, he underwent a CT scan of the backbone, that is to say, T10-L2 of spine, in the Medical College Hospital, Calicut. Those two documents show that

the claimant was in Unit S6. Obviously therefore, he was admitted in Unit S6 of the Calicut Medical College Hospital and he was an inpatient. The claimant deposed that he was admitted as inpatient on various occasions. Ext.A3 dated 20.10(2001?) will show that he was under Orthopedic Trauma Care (OTC). Ext.A2 shows that he was under treatment in the Medical College Hospital, Calicut even on 28.11.2001 on which day that document was first written. Thereafter, on 19.12.2001, it was recorded that he is walking with Cervical Collar and that he had fracture of C2 spine. He was then advised review after four weeks. Ext.A4 to A10, A12 and A14 to A19 would show that the claimant was receiving treatment from the Indo-American Hospital Brain & Spine Centre, Vaikom, Baby Memorial Hospital, Calicut, Kumar's Centre in Thammanam which, going by Ext.A6, is a centre for, among other things, management of Neuro Rehabilitation and Giridhar Eye Institute, Ernakulam and Malabar Eye Hospital & Research Centre, Calicut and further, Arsha Ayurveda Hospital. Ext.A10 is a certificate

issued by the Medical Superintendent of Arsha Ayurveda Hospital on 13.8.2005 certifying that the claimant is undergoing I.P.treatment for stiffness of neck, low back pain and right medial ligament fracture following road traffic accident in 2001 and that he needs rest and frequent I.P.treatment for restoring his health. Ext.A11 is a certificate dated 14.5.2006 issued by the Chief Physician of Arsha Ayurveda Hospital certifying that the claimant was under I.P.treatment of that hospital from 3.5.2006 to 13.6.2006 for post traumatic headache and neck stiffness and that he was advised to take rest for a month and to have regular follow up treatment which is necessary for the restoration of his health. Ext.X1 is the certificate of permanent disability issued by the Medical College Hospital, Calicut on 28.12.2006 certifying that the permanent disability of the claimant due to the injuries recorded therein is 27%. The Board had not separately assessed actual disability due to the injury. Such determination of permanent disability is attributed to

restriction of rotations of cervical spine and mild stiffness of left shoulder following a road traffic accident on 8.9.2001 in which he sustained (1) fracture of C2 vertebra body and both pedicles, (2) fracture of scapula left, (3) hemosinuses of right maxillary, ethmoid and sphenoid sinuses and (4) fracture of frontal bone.

17. With the aforesaid material evidence and the additional evidence taken on record as additional Exts. A23 to A26, it is seen that apart from the other heads of claim, the claimant is entitled to just and reasonable provision to meet the expenses for future treatment in terms of the precedents noted above.

18. Having regard to the evidence of the claimant stating that his monthly income is Rs.6,000/-, the Tribunal took his monthly earning at the time of accident as Rs.5,000/-. We do not find any infirmity in that finding. We also do not find any infirmity in the Tribunal having awarded

Rs.25,000/- towards loss of earnings for five months. However, while determining loss of future earnings on account of the disability, it would have been just and reasonable to bear in mind the chances of the claimant earning more income. We say so because, the claimant had deposed that by the time he was giving evidence, he was practising as an advocate in the High Court. In our view, the Tribunal was not justified in holding that the claimant having attempted to join the post of a trademark examiner on contract basis, it should be taken that his future prospects in the legal profession were apparently bleak. The fact that he had passed the written examination for the selection to the post of Sub Inspector trainee in the Kerala Police was also erroneously put against him to draw the conclusion that he is not likely to go back to the profession as a practising lawyer. The fact that the claimant was selected to be a trademark examiner on contract basis under the Central Government and that he had passed the written test for the post of S.I. trainee and was called

for the physical test taken along with his profession as an advocate ought to have been considered as reflecting all probabilities of the claimant reaching higher benchmarks of earnings than the monthly income of Rs.6,000/- which he pleaded. As a practising lawyer and having been an advocate in the High Court while tendering evidence, it is only just and reasonable to take the view that the claimant would have had his scales of income tilting to far better days than he was earning at the time of accident. Such future profession prospects and earning capacity of the claimant have not been correctly appreciated by the learned Tribunal. On the whole, we are of the view that the future earnings ought to have been calculated taking the monthly income at Rs.6,000/-, reckoning the probable future growth that could be envisioned at the stage of the trial of the claim petition. That being so, the loss of future earnings on account of disability ought to have been determined as $\text{Rs.}72,000 \times 27 \times 17 / 100 = 3,30,480$ instead of Rs.2,75,400/- awarded by the Tribunal.

The claimant is entitled to an additional amount of Rs.55,080/- under this head.

19.The unchallenged testimony of the claimant was that his wife was not available at home since she had gone to her parental home in connection with the delivery of the child. On that basis, it is quite clear that the support of a bystander other than the spouse, was of utmost relevance even if the claimant was not bedridden. The nature of the fracture he had suffered to the cervical bone and the fact that he was wearing cervical collar even in December, 2001 would necessarily probabalise that the claimant required an attendant for different purposes. Hence, the expenditure towards such bystander facility and extra nourishment, taken together, ought to have been reasonably estimated as Rs.10,000/- instead of Rs.3,600/-. The claimant is entitled to a further amount of Rs.6,400/- towards bystander expenses and extra-nourishment.

20.At the time of accident, the claimant was

somewhere near Calicut district. It is shown that he thereafter came over to Ernakulam. He had availed treatment from hospitals in Calicut, Ernakulam, Vaikom and Thiruvananthapuram. Such treatment was exclusively on account of the injuries suffered by him in the accident. Having regard to the number of visits and the treatments that he obtained from the different hospitals, it could be safely concluded that he was entitled to Rs.10,000/- towards expenses for transport in connection with treatment, instead of Rs.4,000/- awarded by the Tribunal. He is entitled to a further amount of Rs.6,000/- towards transport expenses.

21.The award of Rs.30,000/- towards pain and suffering and Rs.10,000/- towards mental shock and inconvenience, taken together, appear to be grossly inadequate as compensation for pain, suffering and trauma caused due to the accident. As against Rs.40,000/- so awarded by the Tribunal, the claimant is entitled to an amount of Rs.75,000/- under this head. An additional

amount of Rs.35,000/- is due to the claimant towards pain and suffering, mental shock, inconvenience suffered and trauma caused due to the accident.

22.Towards loss of amenities,the claimant is entitled to an amount of Rs.20,000/-.

23.As indicated in paragraph 16 above, the medical evidence on record including the additional evidence admitted in this appeal as Exts.A23 to A26, taken along with the testimony of the claimant as P.W.1, would show that as a result of the injuries suffered by the claimant, he has to meet recurring expenditure for future treatment. The fracture that he suffered to C2 vertebra and its both pedicles, the fracture to the left scapula and the damage caused to the face are shown to have resulted in permanent disability as certified by the Medical Board through Ext.X1. The claimant has also proved through Exts.A23 to A26 that even after the filing of the petition, he had been undergoing treatment which is

necessitated for reasons attributable to the injuries suffered by the claimant as a result of the motor accident. Under such circumstances, in terms of the law laid down through the precedents noted above, the claimant is entitled to a just and reasonable provision to meet the expenses for future treatment. Taking all relevant facts and circumstances, and, without forgetting that there would be an element of imponderables and a likely margin of error in such guess-work, also taking into account the increase in the cost of medical treatment, we are of the view that an amount of Rs.1,00,000/- would be a just and reasonable provision by way of consolidated compensation towards expenditure for future treatment. The claimant is thus found entitled to a total amount of Rs.2,37,980/- as additional compensation with interest thereon at 9% per annum from the date of filing of claim petition till date of payment.

In the result, this appeal is allowed in part awarding the claimant an additional compensation of Rs.2,37,980/- (Rupees two lakhs thirty seven

thousand nine hundred and eighty only) with 9% interest thereon from the date of filing of claim petition till date of payment. The second respondent insurer is directed to satisfy this award within a period of two months from the date of receipt of a copy of this appellate award, failing which the rate of interest due on the amount of additional compensation awarded hereby will be 12% per annum from the date of filing of claim petition till date of recovery. No costs.

Sd/-
Thottathil B. Radhakrishnan
Judge

Sd/-
Babu Mathew P. Joseph
Judge

Sha/jg-081215

-true copy-

PS to Judge