

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 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

MACA.No. 1344 of 2009 ()

AGAINST THE AWARD IN OPMV 470/1999 of M.A.C.T., PERUMBAVOOR
DATED 27-09-2005

APPELLANT(S)/PETITIONER:

A.K.KRISHNAN, S/O.KUTTY, ANCHIL HOUSE,
ANGAMALY.P.O., ANGAMALY VILLAGE.

BY ADV. SRI.E.C.POULOSE

RESPONDENT(S):

1. P.J.JOSE, M/S.ACTUAL CONSTRUCTION,
XXXI/1530 JANATHA ROAD, PALLURUTHY, COCHIN-682007. (deleted)

2. PAUL, S/O. JOSEPH, PARAMUTHUSSERY HOUSE,
EDAPPILLY SOUTH, PADIVATTOM P.O.

3. NATIONAL INSURANCE CO. LTD.,
PEUR BRANCH OFFICE, ERNAKULAM MAIN ROAD
MUNICIPAL SHOPPING COMPLEX, PIN-683513.

(R1 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA 170/2015
DT.20.1.2015)

R,R3 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1344 of 2009

Dated this the 9th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is the appellant. The claim petition was filed for grant of compensation consequent on the amputation of his leg in an accident. The Tribunal granted a total compensation of Rs.1,69,050/- with interest at 7% per annum against a total claim of Rs.5 Lakhs. The accident occurred on 8.10.1998 while the appellant was riding his scooter bearing Reg. No.KL-7T 5068. He was working in TELK, Angamaly. The offending vehicle is a jeep with Reg. No.KL-7R-77 which was coming from the opposite direction and it hit against the scooter. The Tribunal, after an assessment of the evidence, found that the driver of the offending vehicle was negligent. The details of the injuries and the treatment are given in paragraph 9 of the award.

2. We extract hereinbelow the following details from the award

in paragraph 9 which supports his case of undertaking various treatment procedures:

“9.....He had produced Ext.A5 wound certificate which shows that he was admitted in the Little Flower Hospital, Angamaly on 8.10.1998 at 12 noon with fracture tibia left, fracture left clavicle, lacerated injury posterior aspect of occipital area. Ext.A6 is another wound certificate issued by Medical Trust Hospital, Ernakulam. As per this certificate the petitioner was admitted on 15.10.1998 at 9.30 p.m. He was referred to Nephrologist and Orthopaedic surgeon of Medical Trust Hospital. (The patient developed renal failure and jaundice (Ref. letter + complaint of jaundice + renal failure + hypovolemia), left lower limb in external fixator with foot included 5 x 4 cm muscle deep wound over the mid 3rd of leg laterally with skin loss 15 x 5 x 5 cm wound posteriorly exposing bone and necroed muscle. Toe movements positive. Contamination positive. X-ray showed that comminuted segmental fracture tibia with external fixator. He was admitted in the department of Nephrology and acute renal failure treated. Emergency wound debridement was done under G.A. muscle necrosis seen. Wound debridement repeated under G.A. on 17.10.1998 and 19.10.1998. Anterior part of muscle also necrosed on 20.10.1998. Below knee amputation was done and skin left open under G.A. done on 21.10.1998 and

22.10.1998. On 12.11.1998 and 17.11.1998 skin grafting done by plastic surgery. Ext.A7 is the treatment certificate issued by St. James' Hospital, Chalakudy. As per this certificate he was admitted in the hospital on 9.10.1998 and discharged on 15.10.1998."

3. It is seen that the appellant had incurred Rs.76,524/- as treatment expenses. This was given by the company in which the appellant was working, but later they recovered an amount of Rs.65,650/-, as he was eligible for two months wages for medical expenses for the accident. Therefore, the Tribunal has granted the said amount of Rs.65,650/- towards medical expenses. Towards loss of leave the Tribunal granted a sum of Rs.10,000/-. Rs.2,000/- has been granted towards transportation charges. For damage to clothing an amount of Rs.200/- and for extra nourishment a sum of Rs.1,000/- have been granted. As far as nursing assistant is concerned, an amount of Rs.2,000/- also has been granted. The retirement age of the appellant is 58. He was aged 40 at the time of accident. Therefore, the multiplier will be 13. The Tribunal assessed his right to get compensation for disability from the age of retirement alone by fixing a notional income

at Rs.1,500/-, which according to the learned counsel for the appellant, is not justified. Rs. 43,200/- has been quantified as disability compensation.

4. Learned counsel for the insurance company submitted that there is no loss of earning power for the appellant. In a case of permanent disability there can be awarded compensation for permanent disability as well as loss of earning power but in the absence of loss of earning power, compensation can be granted for permanent disability along with compensation for pain and suffering and loss of amenities and enjoyment in life. Herein, learned counsel for the appellant pleads for awarding more amount towards permanent disability and support is sought from the certificate issued by the Medical Board wherein the disability is calculated as 40%. There is no dispute that the leg was amputated. This will cause much hardship and difficulty to the appellant. Of course, that has not affected his earning power, but in the light of the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC) followed by later decisions of the Apex Court, the multiplier method can be adopted for

calculating compensation for permanent disability. Ext.X3 is the certificate produced to show the salary of the appellant which will prove the monthly salary as Rs.8,560/-. Even though learned counsel for the insurance company submitted that no doctors have been examined to prove the percentage of disability, for below knee amputation 30% disability has been adopted, which is not a wrong assessment. Apart from the same, regarding amputation there is no dispute also. It was held by the Tribunal that since he has lost his lower limb, it will come within the schedule injury under the Workmen's Compensation Act. Therefore, compensation for permanent disability can be calculated as Rs.3,97,800/- ($8500 \times 12 \times 13 \times 30/100$). Towards compensation for pain and suffering, what is granted is only Rs.20,000/- and towards compensation for loss of amenities, an amount of Rs.15,000/- alone has been granted. Since the appellant has suffered serious injuries and was under treatment for a long time, we fix an amount of Rs.40,000/- as compensation for pain and suffering. An equal amount is granted towards compensation for loss of amenities also since he will have to forego all the physical activities in life

because of the amputation. The same will result in loss of pleasures in life also. The amputation has resulted in dis-figuration also for which the Tribunal has already awarded an amount of Rs.10,000/-.

Accordingly, the total compensation is recalculated as under:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Loss of earnings	10000	10000
Transport to hospital	2000	2000
Damage to clothing	200	200
Extra nourishment	1000	1000
Nursing assistance	2000	2000
Medical expenses	65650	65650
Pain and suffering	20000	40000
Loss of amenities	15000	40000
Permanent disability	43200	397800
Disfiguration	10000	10000
Total		568650

(Rupees five lakhs sixty-eight thousand six hundred and fifty only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition till realisation and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited, if any, before the Tribunal within a period of three months. The appellant will pay court fee for the entire amount awarded which will be recovered by the Tribunal from the

amount deposited by the insurance company.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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