

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

MACA.No. 1023 of 2010 ()

IN OPMV 2038/2004 of M.A.C.T.,KOZHIKODE DATED 13-07-2009

APPELLANT(S)/PETITIONER:

**T.SHOWKATHALI, AGED 34 YEARS,
S/O. OF MUSHAFFA, THOTTUNGAL HOUSE,
KUZHIKKARA PARAMBA
NORTH BEYPORE POST, KOZHIKODE.**

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S)/RESPONDENTS:

- 1. M.V.BASHEER, S/O. MAMAD KOYA,
SHABER VILLA, ARYANTHOPPU, KUNDUNGAL
KOZHIKODE.**
- 2. THE UNITED INDIA INSURANCE CO.LTD.
DIVISIONAL OFFICE NO.1, P.B.NO.533, WHITE LINES,
KALLAI ROAD, KOZHIKODE - 673002.**

R1 & R2 BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

M.A.C.A.No.1023 of 2010

Dated this the 13th day of July, 2015

JUDGMENT

T.R.Ramachandran Nair, J.

This appeal is preferred by the appellant in OP (MV)No.2038/2004 on the files of MACT, Kozhikode, challenging the award passed by the Tribunal.

2. The facts involved in this case show that on 17-08-2914, when the appellant was walking along the road at about 2 p.m., he was hit by a motor cycle having Reg.No.KL-11/K-5803. This happened at a place called Naduvattom West Mahe and he sustained serious injuries and was taken to Koya's Hospital, Feroke.

3. The total compensation awarded by the Tribunal is only Rs.37,000/-.

4. The learned counsel for the appellant submitted that the appellant sustained a serious fracture

and other injuries and was treated as inpatient for a period of 11 days from 17-08-2004 to 27-08-2004. Ext.X1 case sheet will support the same and Ext.A4 is the discharge card issued in respect of the second period of treatment from 09-05-2005 to 30-05-2005. The Tribunal did not accept the same as the date of admission and date of discharge was shown in the reverse manner.

5. The Tribunal also did not accept Ext.A8 medical bills for the subsequent period of treatment on the ground that the treatment reports have not been produced.

6. We have gone through Ext.A6 issued from Koya's hospital which shows the surgical operation details as follows.

“Open reduction, interlocking nailing and circumferential wire fixation and bone grafting”

7. As far Ext.A4 certificate is concerned, it is stated that nailing and circumferential wire is removed.

8. We are of the view that even if there is some mistake in the date of admission and date of discharge in that certificate, it cannot be discarded. Ext.A6 certificate

show that interlocking nailing and circumferential wire fixation was done and the removal of the same is evidenced from Ext.A4, which is later in point of time. Therefore, both of them co-relate.

9. Ext.A8 series, even though were produced the entire bill, amounts were not granted by the Tribunal as medical expenses. The total amount covered by the bills is Rs.23,000/-. We fix the amount towards treatment expenses at Rs.25,000/-, considering necessary expenses for further treatment also.

10. He was a driver by profession and for calculating loss of earning, one month's wages was granted by the Tribunal, which we enhance to four months at the rate of Rs.3,000/- per month. We are also of the view that for transportation expenses and extra nourishment, he will be entitled for a reasonable amount. Apart from the same, he was in hospital for two different periods and a reasonable amount is to be granted towards by stander's expenses, which we fix at Rs.6,500/-. We have also enhanced the amount for pain and sufferings,

since he underwent two surgeries. As compensation for loss of amenities, we grant Rs.10,000/-. Accordingly the just and fair compensation is fixed follows :

<i>Head of Claim</i>	<i>Amount Awarded in rupees</i>
(a) Loss of earnings for 4 months	Rs.12,000/-
(b) Transportation expenses	Rs.2,500/-
(c) Damage to clothing	Rs.1,000/-
(d) Compensation for extra-nourishment	Rs.3,000/-
(e) By stander's expenses	Rs.6,500/-
(f) Pain and suffering	Rs.30,000/-
(g) Loss of amenities	Rs.10,000/-
(h) Treatment expenses	Rs.25,000/-
<i>Total</i>	Rs.90,000/-(Rupees ninety thousand only)

11. We fix a total compensation of Rs.90,000/- (Rupees ninety thousand only), which will bear interest at the rate of 9% per annum for the enhanced compensation from the date of the filing of the petition.

The Insurance company is found liable by the Tribunal. Therefore we confirm the same and direct the insurance company to deposit the amount with interest granted, within a period of three months from the date of

receipt of a copy of this judgment. We permit the appellant to withdraw the amount. The parties will suffer their cost in this appeal.

Sd/-

T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-

K.P.JYOTHINDRANATH, JUDGE

VS

/TRUE COPY/

PA TO JUDGE