

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

MACA.No.87 of 2008 (A)

AGAINST THE AWARD IN OP(MV)No.2046/2002 of M.A.C.T., PERUMBAVOOR
DATED 30-06-2007

APPELLANT/PETITIONER::

A.K.ALIAS, S/O.KURIATH,
AREEKKAL HOUSE, MEKKADU, ANGAMALY.

BY ADV. SRI.T.K.KOSHY

RESPONDENTS/RESPONDENTS::

* 1. JAGAN,
S/O.VARGHESE P.THOMAS,
ARCHANA HOUSE, PALARIVATTOM, EDAPPILLY VIA.

*(Respondent No.1 is removed from the party array as per order
dated 6.11.2012 in I.A.2568/12 in MACA.No.87/08.)

2. N.X.MIDAS, XI/141, SOUTH THAMARAPARAMBU,
FORT KOCHI-1.

3. ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE,
EBENEZER GARDEN, EDAPPILLY HIGH SCHOOL JUNCTION, KOCHI-25.

R2 BY ADV. SRI.C.AJITH KUMAR (KALLESSERIL)

R2 BY ADV. SRI.ANTONY KUREETHARA

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

T.R.RAMACHANDRAN NAIR & ANIL K.NARENDRA, JJ.

M.A.C.A.No.87 of 2008

Dated this the 07th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant who was aged 52 years at the time of the accident is aggrieved by the inadequate compensation awarded by the Tribunal.

2. We heard the learned counsel for the appellant and the learned counsel for the insurance company.

3. The accident occurred on 14.1.2002 while he was riding a motor cycle bearing No.KL/7W-1840 and it was hit by a vehicle bearing No.KL-7A-3131 driven by the first respondent which was coming from the opposite direction. The appellant sustained serious injuries, the details of which are shown below:-

1. Closed Fracture right Lateral tibial condyle with articular depression.
2. Fracture both bones left Fore arm L/3 with sutured wound over Ulna.
3. Right Frontal bone fracture with underlying contusion, B/2 frontal hygroma.
4. Lacerated wound over left fore arm and chin multiple lacerated wound over face.
5. loss of 4 teeth.
6. Multiple abrasion and laceration frontal region.

4. The Tribunal granted a total compensation of ₹1,17,162/-. The learned counsel for the appellant, while referring to the findings of the Tribunal, submitted that, even though detailed treatment was undertaken by him and, he had claimed an amount of ₹.1,22,300.42 for medical expenses, no amount was awarded by the Tribunal.

5. The period of treatment going by the evidence before the tribunal will be the following:- He was initially admitted on 14.1.2002 to 18.1.2002 vide Ext.A8. He was admitted in the L.F.Hospital, Angamaly at that time. The next spell of treatment is clear from Ext.A11 discharge summary issued from the Medical Trust Hospital, Ernakulam which shows that he was admitted on 18.1.2002 and treated up to 13.2.2002. Ext.A13 certificate will show that he was under bed rest from 17.2.2003 to 23.3.2003.

6. The petitioner has adduced detailed evidence by producing documents. The Doctor was examined as PW.1, who issued disability certificate.

7. We have gone through Ext.A17 income loss certificate and Ext.A18 series of bills. It is seen that the employer has re-funded various amounts towards the medical expenses. The Tribunal after hearing the learned counsel for the appellant has observed that even after giving opportunity, the appellant could not adduce proper evidence regarding the

bills. It is clear that he had claimed reimbursement from the company. As far as the grant of compensation for medical expenses is concerned, the appellant had to prove that the employer has not reimbursed the amounts in respect of various heads for which he has proof. We are unable to agree with the contention of the learned counsel for the appellant that the tribunal wrongly denied the claim of ₹1,22,000/- towards medical expenses. It is informed that he had to refund ₹.15,161/- out of the total amount disbursed by the employer. Therefore he is entitled for the said amount. We accordingly allow ₹15,161/- towards the medical expenses.

8. The next item is monetary loss for not attending duties for 142 days. Sri.T.K.Koshy, learned counsel for the appellant submitted that when the employer had certified various items as due to the claimant like employer's share of P.F. Contribution, attendance, bonus for six months and income for six months the tribunal could have rightly accepted the documents. As rightly pointed by Sri.V.P.K.Panicker, learned counsel for the third respondent, the claimant had to prove that these amounts actually can be termed as loss of income, namely, special damages as far as the appellant is concerned.

9. According to us, there is no evidence to prove that he has not received the entire income by way of wages and the employer has not remitted the P.F. Contribution. In the absence of the proof in the nature

we have indicated above, we confirm ₹23,872/- towards loss of income as finalised by the tribunal.

10. Serious dispute is with regard to the per centage of disability. The Doctor in his certificate has assessed disability at 24%, which is mainly on three counts. First one is for partial ankylosis (R) knee with motion limits to an arc in 180°. Second one is partial ankylosis (L) wrist 45° and the third one is the partial ankylosis of (R) auricle due to sec OA 180 line 45°.

11. The learned counsel for the appellant submitted that there is proper evidence on the part of the appellant through PW.1 who is the Doctor who had issued certificate. We have gone through the certificate issued by the Doctor also. It is seen from the deposition that he had not treated the appellant. In the cross-examination various suggestions have been made and challenge has also been made with regard to the calculation of per centage of the disability. Of course, the Doctor has not explained the details of the disability, per centage of the disability and whether the disability assessed at 24% is to the whole body or not. The tribunal fixed it as 12% for various reasons.

12. Of course, even if certificate issued shows 24% disability going by the evidence adduced by the parties, the learned counsel for the appellant stressed the fact that he had suffered injuries to various parts

and according to him the disability has affected his mobility. The Tribunal has fixed the whole body disability as 12% wrongly according to learned counsel. After going through the certificate as well as the evidence of the Doctor we feel it proper to fix it as 18% to the whole body.

13. The compensation for disability is fixed by the tribunal by taking the monthly income as ₹2,000/- after retirement. The evidence is to the effect that he was drawing ₹8,475/- at the time of the accident. The learned counsel for the insurance company submitted that there is no loss of earnings as far as the appellant is concerned. Actually the appellant has suffered permanent disability for which he is liable to be compensated. As far as this head of compensation is concerned, we fully agree with the learned counsel for the appellant that, even if there is no loss of earning, the injury and the consequences of the injuries are liable to be compensated. Here in going by the decision in **Sarla Varma Vs. Delhi Transport Corporation** [2010(2) KLT 802 (SC)] for fixing compensation multiplier method will have to be adopted. His monthly salary was ₹8,475/- and taking the per centage of disability as 18 it will be just and proper in assessing the proper compensation. As the appellant was aged 52 years, before the retirement he had service for only 8 years. As far as the balance 3 years service is concerned, we can only fix a notional income and the income fixed by the tribunal therefore is adopted for the

period in the absence of any other evidence.

14. As far as the pain and suffering are concerned, Tribunal allowed ₹30,000/-. The evidence is to the effect that he was inpatient for 35 days and he had taken leave for total 142 days evidently for continuing treatment. Therefore we find it reasonable in allowing ₹.50,000/- towards pain and suffering. As far as loss of amenities and discomfort are concerned, we find it proper to fix it as ₹.40,000/-. The learned counsel for the appellant sought for enhancement for attendant's charges. What is awarded by the tribunal is ₹.5,000/-, we fix it as ₹.7,000/- in total by taking ₹.200/- per day for the period of treatment as inpatient. Even though the learned counsel for the appellant submitted that for 142 days of leave availed he is liable to be compensated for bystanders expenses, in the absence of proper evidence to show bystanders expenses have been incurred for treatment as out patient it may not be proper to accept the said plea. As expenses for transportation Tribunal awarded ₹.3,000/-. It will be enhanced to ₹.3,500/-. As compensation for disability Tribunal awarded ₹.23,040/-, which will stand enhanced to ₹.1,59,408/- by adopting multiplier as 11. Accordingly the total compensation will be ₹3,02,691/- as detailed below:-

<i>Head of claim</i>	<i>Amount awarded</i>
Loss of income	₹23,872/-
Transportation expenses	₹3,500/-
Extra nourishment	₹3,500/-
Attendant's charges	₹7,000/-
Damage to clothings	₹250/-
Pain and suffering	₹50,000/-
Loss of amenities and discomfort	₹40,000/-
Compensation for disability	₹1,59,408/-
Medical Expenses	₹15,161/-
Total	₹3,02,691/-

15. The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed. There will be no order as to costs.

T.R.RAMACHANDRAN NAIR, JUDGE

ANIL K.NARENDRA, JUDGE

skj