

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

MACA.No. 1698 of 2014 ()

AGAINST THE AWARD IN OPMV 458/2009 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, ERNAKULAM DATED 25-01-2014

APPELLANT/PETITIONER:

ANIL KUMAR.M. AGED 51 YEARS
SON OF SRI.N.KUMARAN, PENTA QUEEN APARTMENTS, B3 BLOCK
4 B1, PADIVATTOM, EDAPPALLY P.O.
EDAPPALLY SOUTH VILLAGE, ERNAKULAM DISTRICT.

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SMT.ANILA PETER
SRI.J.VIVEK GEORGE

RESPONDENTS/RESPONDENTS:

1. DR. DAVID JOSEPH
S/O.GEORGE JOSEPH M, TC/11/707, "KRIPA"
PWD DIVISION OFFICE ROAD, PMG JUNCTION
THIRUVANANTHAPURAM-695033.

2. THE NEW INDIA ASSURANCE COMPANY LIMITED
COCHIN DIVISIONAL OFFICE
KOTTAKKAL ARYA VAIDYASALA BUILDING, M.G.ROAD
COCHIN-682016.

R2 BY ADV. SRI.P.JACOB MATHEW
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1698 of 2014

Dated this the 20th day of January 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident. The accident occurred on 6.5.2008 while he was travelling on a scooter as a pillion rider. He was knocked down by a car which hit against the scooter. He sustained very serious injuries. He was taken to Medical College Hospital, Thiruvananthapuram and from there to S.P.Fort Hospital, Thiruvananthapuram. Thereafter he underwent treatment in AIMS, Kochi and then in Lakeshore Hospital, Kochi.

2. The claim petition was filed seeking compensation to the tune of Rs. 20 lakhs. But the Tribunal awarded only a sum of Rs. 2,25,750/-. This appeal is filed seeking enhancement of compensation on the ground of inadequacy in the compensation awarded by the Tribunal under various heads.

3. We heard the learned Counsel appearing on either side.

The learned Counsel for the Insurance Company opposed the claim for enhancement.

4. Evidence before the Tribunal consists of oral evidence adduced by the appellant, who got himself examined as PW1 and documentary evidence by marking Ext A1 to A29. The appellant was working as Regional Sales Manager in Ajanta Pharmaceuticals Ltd. It was claimed that he was getting a monthly income of Rs. 32,380/- as salary apart from other allowances. Ext A10 and A21 were marked in support of his claim.

5. The records relating to the injuries and the treatment undergone by the appellant show that appellant sustained very severe injuries to his entire right leg including femur. A17 treatment certificate from Fort Hospital shows that he underwent surgery and implant. While discharging from S.P.Fort Hospital, Thiruvananthapuram after treatment there for 2 weeks, he was referred to Medical College Hospital, Thiruvananthapuram. He was thereafter admitted in AIMS, Kochi on 17.8.2008 and was discharged on 19.8.2008. The treatment undergone there are

stated in Ext A8 certificate as IM nail for shaft of right femur fracture with post traumatic stiffness of right knee and fracture lateral malleolus on the right side. It was also stated that he can resume duty by 15.10.2008. He was advised to take physiotherapy and that was done at Lakeshore Hospital. He was admitted in Lakeshore Hospital on 16-12-2010 due to infection and was discharged on 21.12.2010. During that period implants were removed and he could start walking with the help of a walker; then with the help of elbow crutches after one month and thereafter with the help of walking stick. He continued to have severe pain in the knee and got only restricted movements in right ankle. He deposed before the Tribunal that he cannot walk speedily or run. He is also unable to ride two wheelers. He finds it difficult to climb up or climb down the stairs. It is stated that he had to spend nearly Rs.4 lakhs towards his treatment expenses.

6. The Tribunal has granted only a sum of Rs. 7,000/- for transportation as against his claim for Rs.25000/-. We have seen that he had undertaken treatment in various hospitals in

Thiruvananthapuram and Ernakulam during the period from 2008 to 2010 on various occasions. Considering the expenditure incurred for transportation to and from the hospitals, we enhance the amount to Rs. 20000/-. Towards extra nourishment, the Tribunal has granted only Rs.1,000/- even though a sum of Rs. 10,000/- was claimed. We enhance the compensation under the head of extra nourishment to Rs. 5,000/-. Towards damage to clothing, the Tribunal has granted only an amount of Rs. 500/- We enhance the same to Rs. 1,500/-, considering the fact that he was working as a Regional Manager.

7.The Tribunal awarded a sum of Rs. 80950/-towards loss of earnings for five months taking his salary as Rs.16190/-, as against the claim for Rs.3,75,000/-.Learned counsel for the appellant pointed out that Ext A21 letter and A10 certificate contained all the particulars of his salary as Senior Regional Sales Manager. In Ext A21, salary was stated to be Rs. 32380/-. The Tribunal reckoned only the basic pay mentioned therein i.e 16190/- and awarded compensation for loss of earnings for 5 months. On examination of the contents of Ext.A10 and A21, we

M.A.C.A. No.1698 of 2014 :5:

find that the entire amount covered by the pay slips i.e Rs. 32380/- can be reckoned as his monthly earnings. Ext.A10 shows that his monthly salary for May 2008, June 2008, August 2008 and September 2008 was Rs. 32,380/-. Therefore, there was no reason for the Tribunal to take the basic pay alone. Therefore appellant will be entitled to a sum of Rs. 1,61,900/- (32380x5) under the head of loss of earnings.

8. The appellant was aged 46 at the time of the accident. It is claimed that he had resigned his job on account of the injuries sustained to him due to the accident. The disability certificate Ext.C1 shows that he has incurred 10% disability. However, the disabilities incurred by him do not in any way affect his avocation. No functional disability is stated to have been incurred by him in Ext.A8 disability certificate issued by the Medical Board. Even though the Tribunal found that the disability incurred by him is not likely to affect his avocation, a sum of Rs. 31,200/- was awarded towards compensation for continuing and permanent disability reckoning a notional income at the rate of Rs. 4,000/- per month and adopting the multiplier of 13 and

percentage of disability as 10%. We find that instead of granting compensation under this head, the appellant is liable to be compensated towards the non-pecuniary losses caused to him on account of the accident.

9. The Tribunal has awarded an amount of Rs. 20,000/- towards pain and suffering. Considering the nature of injuries sustained to him and the the treatment he had to undergo till December 2010, the pain and agony he would have suffered would be much more, on account of various courses of treatment all along, with the incapacities due to fracture. We find it just and proper to award a sum of Rs. 50,000/- towards pain and suffering.

10. At the same time we find that the appellant has been unable to enjoy the normal amenities of life on account of the inconveniences and discomforts on account of the injuries sustained and he will not be able to regain the position obtaining before the accident. The Tribunal has not awarded any amount towards shortened expectation in life. With regard to the nature of injuries sustained we find it just to award a sum of Rs.

M.A.C.A. No.1698 of 2014 :7:

50,000/- towards loss of amenities and enjoyment of life/shortened expectation of life and a sum of Rs.25100/- towards shortened expectation of life.

11. Accordingly, we modify the award as follows.

<i>Sl. No.</i>	<i>Heads</i>	<i>Amt. Awarded</i>	<i>Modified award</i>	<i>Basis</i>
1	Loss of earnings	80950	161900	32380x5
2	Transport to hospital and back to home.	7000	20000	
3	Extra nourishment	1000	5000	
4	Damage to clothing	500	1500	
5	Attendant Expenses	15000	15000	
6	Medical expenses	65100	65100	
7	Compensation for pain and suffering	25000	50000	
8	Compensation for continuing and permanent/partial disability.	31200		
9	Compensation for loss of expectation of life/amenities and enjoyment in life		50000	
10	Compensation for short expectation in life		25000	
	Total	225750	393500	

12. The appellant will be entitled to a total compensation of

M.A.C.A. No.1698 of 2014 :8:

Rs. 3,93,500/- as compensation. We are of the view that the interest at the rate of 8% p.a is too low and we fix the interest at the rate of 9% p.a from the date of petition by relying upon the decision of the apex court reported in ***Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. And Anr.[(2009)4 SCC 513]***.

The Insurance Company is directed to deposit the entire amount within a period of three months, less the amount already deposited. It is made clear that the interest is made applicable only for the enhanced compensation.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge

M.A.C.A. No.1698 of 2014 :9:

fair copy