

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

MACA.No. 1493 of 2009 ()

AGAINST THE AWARD IN OPMV 1505/2003 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 17-07-2008

APPELLANT/PETITIONER IN OP(MV):

BINDU, W/O.PRADEEP KUMAR, RESIDING AT
KUNNUMMAL HOUSE, P.O.PERUMANA, POOVATTUPARAMBA ROAD
KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS IN OP(MV):

* 1. AVARANKUTTY, S/O.PUTHUMMA, RESIDING AT
PALAMADATHIL HOUSE, ABDURAHIMAN NAGAR
P.O.YARATHUMPADI, TIRUR, MALAPPURAM. *[DELETED)

2. NATIONAL INSURANCE CO.LTD., DIVISIONAL
OFFICE, NO.VII, IIND FLOOR
MAMANN CENTRE, 57, THIRUVALLA INDUSTRIAL ESTATE
GUINDY, CHENNAI.

*(RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE APPELLANT AS PER ORDER DATED 4.3.2015 IN I.A. 816/15 IN
M.A.C.A. 1493/09) .

R2 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1493 of 2009

Dated this the 18th day of March 2015

JUDGMENT

Ramachandran Nair , J.,

The injured/claimant is the appellant herein. The accident occurred on 17.5.2003 while she was travelling in a bus which was hit by another bus bearing registration No. KL-10/M-4339. As against the total amount claimed at Rs. 2 lakh, the Tribunal awarded Rs. 61,110/-.

2. Learned counsel for the appellant submitted that she was a tailor by profession and was aged only 22 at the time of the accident. The appellant claimed Rs.5,000/- as monthly income. But the Tribunal fixed the monthly income only at Rs. 1,350/-. It is also submitted that the claimant was in hospital for a period of 10 days and no amount has been granted towards bystander's expenses.

3. The Claimant was examined by a Medical Board and certificate has been produced before the Tribunal. 20% disability has been certified. But proper amounts have not been

fixed for disability compensation also.

4. The discussion of the evidence in paragraph 7 shows that she had sustained fracture to both bone of forearm(R). She was examined as PW1. It was evident that her right arm is deformed. According to the Tribunal, the Medical Officer should have applied his mind when the percentage is fixed with implant inside and it is unknown whether it is a permanent fixation. Therefore it appears that percentage has been reduced to 15%.

5. According to us, the monthly income if fixed at Rs. 3,500/- will be reasonable as she is a tailor. Therefore, the total compensation towards permanent disability will be Rs. $3500 \times 12 \times 18 \times 15 / 100 = 1,13,400/-$

6. We grant an amount of Rs. 20,000/- for pain and suffering. Towards partial loss of earnings for three months, the amount will be Rs. 10,500/-. It is seen from the award in paragraph 7 that an implant has been fixed. Therefore, evidently she has to undergo a surgery. Therefore we provide an amount of Rs. 7500/- for expenses for surgery viz., for future treatment. The Tribunal has granted amount under the head loss of amenities and disability together, which is not justified. In the light of the disability sustained by her, there will be loss of

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amenities and enjoyment of life. It will have to be duly compensated, for which we grant an amount of Rs. 10,000/-.

7. Accordingly, we modify the award as follows:

Sl. No.	Heads of claim	Amt. Awarded	Amt. Modified.
1	Medical Treatment	5000	5000
2	Incidental charges	2000	2000
3	Pain and sufferings	8000	20000
4	Loss of disability at 15%	41310	1,13400
5	Loss of income	4050	10500
6	Transportation	750	750
7	Future treatment	-	7500
8	Loss of amenities	-	10000
	Total	61110	169150

8. Thus the total compensation will be Rs. 1,69,150/-. The Tribunal has granted interest at the rate of 7% from 20.6.-03. We award interest at the rate of 9% p.a from the said date for the enhanced compensation.

9. The Insurance Company is directed to deposit the amount less already deposited within a period of three months. The appellant is permitted to withdraw the amount.

The appeal is allowed accordingly. The parties will bear their respective costs in this appeal.

Sd/-
T.R.RAMACHANDRAN NAIR
(JUDGE)
Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge