

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 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

MACA.No. 1202 of 2010 ()

AGAINST THE AWARDIN OPMV 439/2006 of MACT PALA DATED 26-08-2008

APPELLANT/PETITIONER:

**CYRIL P JOSEPH, S/O. P.J.JOSEPH,
PARIYANICKAL HOUSE, KURAVILANGADU.P.O., KURAVILANGADU.**

BY ADV. SRI.MATHEW ABRAHAM

RESPONDENTS:

- 1. KISHORE JOSE, KALATHARA HOUSE,
ELAMAKKARA.P.O., ERNAKULAM DISTRICT.**
- 2. THE NEW INDIA ASSURANCE CO. LTD.,
1ST FLOOR, CHANDRIKA BUILDINGS, M.G.ROAD, COCHIN
ERNAKULAM.**

R,R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

SMM

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

.....
M.A.C.A. No.1202 of 2010
.....

Dated this the 25th day of March, 2015.

J U D G M E N T

T.R.Ramachandran Nair, J

M.A.C.A No.1202/2010 is filed by the injured in a motor vehicle accident and the main grievance is regarding the inadequacy of compensation.

2.The accident occurred on 3-1-2005 at 2.pm at Kaloor, Ernakulam. The appellant was riding his Scooter bearing Reg.No.KL-7/AM-328 through Kadavanthra-Kaloor road. The offending vehicle was a motor cycle bearing Reg.No.KL-5/K-3491, which hit the scooter driven by the appellant . The appellant fell down and sustained injuries.

3. The Tribunal awarded a total compensation of Rs.79,830/- with 9% interest from 13-7-2006 and with cost Rs.2,000/-.

4. Heard both sides. The learned Counsel for the appellant raised the following contentions:

There is a claim of Rs.76,904/- for medical expenses in total. After deducting Rs.40,000/- under the medi claim policy, which he had obtained, only Rs.10,000/- has been granted under the head medical expenses and the balance amount also has to be awarded. While considering the income at Rs.7,000/- per month, the Tribunal deducted 1/3rd for his personal expenses. The Tribunal has awarded Rs.2,000/- towards transport to hospital, and also Rs.250/- for extra nourishment, which require reasonable enhancement.

5. Apart from the same, amount awarded towards bystanders expenses and also towards loss of amenities require enhancement. It is prayed that proper compensation may be granted for the injuries which have resulted in 8% permanent disability.

6. We heard the learned Counsel for the Insurance

Company who submitted that the disability certificate was not accepted by the Tribunal and the Doctor has not been examined. The learned Counsel also submitted that the Tribunal has awarded reasonable amounts.

7. The evidence shows that the appellant was treated as inpatient for 17 days initially and later for 2 days, making it a total of 19 days. He had undergone two surgeries. Considering the period of treatment and requirement of an assistant, the Tribunal has granted bystanders' expenses for four months at the rate of Rs.1,500/- per month. According to us, the same is too low and we further grant an amount of Rs.6,000/- thus making a total to Rs.12,000/-.

8. As far as the monthly income of the appellant is concerned, Ext. A9 Income Tax return was accepted which shows that it comes around Rs.7,000/-. While calculating the loss of income for 5 months, 1/3rd is deducted for personal expenses, which is not justified.

We, therefore, award a total amount of Rs.35,000/- under the said item.

9. For transport to Hospital, we award an amount of Rs.3,000/- since he was treated in Lakeshore hospital as well as in the Kottayam Medical College hospital and for extra nourishment also, we grant a sum of Rs.3,000/-.

10 Out of the total amount of Rs.76,904/- expended for treatment, the Tribunal excluded Rs.40,000/- which he had obtained already under the medi-claim policy. A further amount of Rs.10,000/- alone has been granted. Therefore, we award an amount of Rs. 36,904/-, as there is no dispute about the said claim.

11. The appellant has sustained comminuted fracture medial condyle of left tibia and in the light of the period of treatment as inpatient for 19 days and outpatient for further period we award a total amount of Rs.35,000/- towards pain and sufferings. Under the head of loss of amenities what was granted by the Tribunal is

Rs.20,000/- and we confirm the same. For permanent disability by taking the monthly income as Rs.7,000/- and adopting the multiplier as 16, we grant a total amount of Rs.1,07,520/-($7000 \times 12 \times 16 \times 8/100$). For damages to clothing, we award a sum of Rs.1000/-.

<i>Head</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount modified</i>
Medical expenses	10000	36904
Loss of earnings	23330	35000
Bystander expenses	6000	12000
Extra-nourishment	250	3000
Damages to clothing	250	1000
Transport to hospital	2000	3000
Pain and suffering	18000	35000
Loss of amenities	20000	20000
Permanent disability	Not entitled	1,07,520/- ($7000 \times 12 \times 16 \times 8/100$)
Total	79830/-	2,53,524/-

(Rupees two lakhs fifty three thousand five hundred and twenty four only, which is rounded off to Rs.2,53,525/-)

12. Therefore, the total amount will come to

Rs.2,53,525/- which will carry interest at the rate of 9% per annum from the date of petition. If any further amount is payable by the appellant towards court fee, the same will be realised from the amount deposited by the insurance company, and before disbursing the same to the appellant. The Insurance Company will deposit the modified amount, less any amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. The party shall bear respective costs.

T.R.RAMACHANDRAN NAIR
JUDGE

P.V. ASHA
JUDGE

smm

