

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

MACA.No. 252 of 2008 ()

AGAINST THE AWARD IN OPMV 2645/2002 of MACT, THRISSUR

APPELLANT/PETITIONER::

LAKSHMI, W/O. GOPALAN,
KOOLIYOTIL HOUSE, P.O. VENGODI, PALAKKAD DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS::

1. VINOD GANESH I.,
S/O. G. LAKSHMI NARAYAN, KOLATTAPPULLY HOUSE,
XXXI/43
P.O. POONKUNNAM, THRISSUR DISTRICT.(DELETED)

2. THE NEW INDIA ASSURANCE CO. LTD.,
BRANCH OFFICE, 2ND FLOOR, PERINCHERY BUILDING
ROUND NORTH, THRISSUR DISTRICT.

R2 BY ADV. SRI.P.G.GANAPPAN

* R1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT AS PER ORDER DATED 8.1.2014 IN I.A.NO.24/2014

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.252 OF 2008

Dated this the 13th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant is aggrieved by the inadequacy of compensation awarded by the Tribunal in O.P.(MV)No.2645/2002. The accident occurred on 12/11/2001 at about 5 p.m. While she was walking through Kanjikode Palakkad NH 47, a motor cycle bearing Reg.No.KL 8/P 5618 hit against the appellant and she fell down and sustained serious injuries. She was initially treated in Fort Hospital, Palakkad and thereafter was treated in Aswinin Hospital, Thrissur as an inpatient.

2. The total compensation awarded by the Tribunal is ₹2,06,900/-. Before the Tribunal, PWs 1 and 2 have been examined. PW2 is the doctor and PW1 is the husband of the appellant.

3. It is seen from the plea raised by the appellant that she was indulging in manual work as a coolie earning ₹3,000/- per month. The Tribunal accepted only a sum of ₹1,500/- as the monthly income for

the purpose of awarding compensation. It is submitted by the learned counsel for the appellant that the year being 2001, ₹3,000/- was reasonable. It is also submitted that the appellant sustained very serious injuries and has been crippled in her life because of the impact of the disabilities sustained by her. The injuries she had sustained are head injury, left temporo parital lobe haematoma, subarachnoid haemorrhage, diffuse cerebral and brain stem oedema and multiple bodily injuries. She had undergone two surgeries also during the period of inpatient treatment from 12.11.2001 to 17.12.2001. It is also the case of the appellant that she was under outpatient treatment for a period of one year minimum. As a result of the injuries, she is suffering from disabilities like loss of vision, inability to speak, hemiparesis, loss of cognitive and comprehensive power etc. The injured was aged 45 at the time of the accident. The Tribunal in paragraph 10 has discussed the various aspects in awarding compensation. According to us, the monthly income fixed at ₹1,500/- is too low. The claim raised by the appellant was not at all exorbitant and it was only reasonable. Therefore we adopt ₹3,000/- as the monthly income of the appellant

for the purpose of assessing compensation.

4. The disability certificate has been produced as Ext.A7. The disability assessed is at 48%. This is supported by the evidence of PW2, the doctor, also, who stated that there is loss of vision, difficulty to speak, craniotomy defect and hemiparesis.

5. The assessment of compensation shows that the Tribunal has granted amounts in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	9000
Expense for transportation	1000
Expense for extra nourishment	2000
Damages to clothing	500
Expenses for treatment	41300
Expense for bystander	3500
Compensation for pain and suffering	12000
Compensation for disability	129600
Compensation for loss of amenities	8000
Total	206900

6. In the light of the nature of the injuries and the treatment procedures undertaken, it will be only reasonable to grant loss of partial

earnings for a period of one year. It will make it to an amount of ₹36000/-. As far as transportation also, we find that she was treated in two different hospitals and she had to attend reviews from time to time. Therefore we grant an amount of ₹4,000/- for transportation. We also enhance the amount awarded towards extra nourishment to ₹5000/-.

7. As far as the expenses for treatment is concerned, the learned counsel for the appellant submits that the hospital had certified that the total amount will be ₹63,675/- which is clear from the copy of the plaint which is produced as Ext.A13. The hospital had filed a suit for realising the balance amount from the appellant. It is submitted that the said suit was compromised in Adalath for an amount of ₹50,000/-. Therefore, the rest of the amount covered towards treatment expenses will be around ₹25,000/-. We award the same.

8. Even though ₹10,000/- was claimed for future treatment, nothing has been granted by the Tribunal. We are of the view that in the light of the medical reports as well as the evidence of the doctor, she will be entitled for a reasonable amount towards future treatment. She has to continue with the physiotherapy treatment also which is not

limited to any period also. These aspects are clear from the various records produced by the appellant and the Tribunal has chosen not grant any amount stating that there is no documentary evidence for the same. We are of the view that the background of the appellant along with treatments undertaken and the details available from the records will justify her claim. Therefore, we award a sum of ₹25,000/- towards future treatment.

9. Towards pain and suffering, ₹12,000/- has been granted by the Tribunal. The appellant had to undergo two surgeries and the evidence will show that she was in ventilation for 12 days. It is seen that the appellant was subjected to different treatment procedures also. Therefore, an amount of ₹50,000/- will be reasonable as compensation for pain and suffering.

10. As far as the disability is concerned, what is assessed by the Doctor is 48%. We have already discussed the details of the disabilities suffered, the cumulative effect of which will result in depriving her avocation in life itself. She was working as a coolie, namely, a manual labourer. Therefore, the appellant will not be able to do any manual

work as before, which means, there is functional disability to a greater extent. We will be justified in taking the disability as 100% in the circumstances of the case. Therefore the disability compensation will ₹5,04,000/- (3000 x 12 x 14 x 100%).

11. What is granted towards loss of amenities is ₹8,000/-. It is evident that the appellant will not be able to lead a normal life and she will have to resort to the help of others for pursuing her normal daily needs in life also. The disabilities will continue life long and it will restrict her ability to walk freely, work freely, she will not be able to read properly because of loss of vision and there is difficulty to speak which will result in depriving her ability to communicate with people also. Considering all these aspects together, we award a sum of ₹1,00,000/- towards loss of amenities.

12. Lastly for bystander expenses, the Tribunal has awarded a sum of ₹3,500/-. Since the disabilities are life long, the appellant will have to depend on a bystander for pursuing her normal avocations. Therefore, we award a sum of ₹50,000/- towards bystander expenses.

13. Accordingly, the appellant will be entitled for compensation

in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	36000
Expense for transportation	4000
Expense for extra nourishment	5000
Damages to clothing	500
Expenses for treatment	66300
Expense for bystander	50000(During the period of treatment and for future)
Compensation for pain and suffering	50000
Compensation for disability	504000
Compensation for loss of amenities	100000
Future treatment expenses	25000
Total	840800/- (Rupees eight lakhs forty thousand eight hundred only)

14. The amount will carry interest @ 9% per annum for the enhanced compensation. There will be a direction to the Insurance Company to 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 court fee payable for the amount awarded will be realised from the amount deposited by the Insurance Company. We

permit the claimant to withdraw the amount also.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.