

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. 325 of 2008 ()

AGAINST THE AWARD IN OPMV 2211/2001 of MACT, THRISSUR DATED
06-06-2007

APPELLANT/PETITIONER::

SASIKUMAR @ SASI, S/O LATE RAGHAVAN PILLAI
SREEKUMARA VILASAM
THANIPADAM, P.O.CHUVANNAMANNU
THRISSUR DISTRICT

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS 2 TO 4::

1. KRISHNANKUTTY, S/O ANDU
MARUTHACODE HOUSE
ERUMAYOOR, ALATHUR
PALAKKAD DISTRICT
2. THE ORIENTAL INSURANCE CO.LTD
DIVISIONAL OFFICE SHOBA TSM COMPLEX
V.H.ROAD
PALAKKAD
3. ANDU, MARUTHACODE HOUSE
ERUMAYOOR, P.O.ALATHUR
PALAKKAD DISTRICT (DECEASED)

* RESPONDENT NO.1 IS RECORDED AS THE LEGAL REPRESENTATIVE
OF DECEASED 3RD RESPONDENT VIDE ORDER DATED 26.2.2015 IN
MEMO DATED 16.2.2015.

R2 BY ADV. SRI.S.MAMMU

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

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

M.A.C.A.No.325 OF 2008

Dated this the 18th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant is the injured in an accident which occurred on 14.9.2000. He was walking along a public road and was hit by a tempo van driven by the second respondent. Serious injuries were caused to the appellant including head injury, fracture humerus and fracture right ulna. He was initially admitted in the Aswini Hospital, Thrissur, where he was inpatient for 12 days and he underwent brain surgery also. For better treatment, he was removed to Government Hospital, Erode where was inpatient for 22 days. It was claimed that he was aged 29 at the time of the accident and was working as Secretary in a Milk Society earning ₹3,500/- per month.

2. The learned counsel for the appellant Sri.P.V.Chandramohan submitted that the Tribunal has arrived at the monthly income only at ₹2,000/- which is totally inadequate. It is also

submitted that the Tribunal even though arrived at the percentage of disability based on three certificates finally reduced it to 20% from 32.32 %, which is not justifiable. It is also submitted that the doctor was examined as PW1 and his evidence was also available before the Tribunal. It is clear from the discussion of evidence that the appellant sustained the following injuries, which is supported by Ext.A6, copy of the wound certificate :

“ head injury with tentorial haemorrhage, hydro cephalus, aqueductal stenosis, fracture humerus, fracture right ulna, haematoma left temporal area, multiple bodily and facial injuries.”

3. The monthly income is calculated at ₹2,000/- as already pointed out by the learned counsel for the appellant. Evidently, he was a daily wage earner in a milk society. Of course, the learned counsel for the appellant has got a case that the appellant was earning the income throughout the month since it is a milk society, but for the purpose of awarding compensation, this Court will have to weigh various aspects. We therefore fix the monthly income at ₹2,500/- considering the nature of the employment. As far as fixation of total

compensation is concerned, the Tribunal has fixed it at ₹1,47,350/-.

The following are the heads under which compensation has been arrived at :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	12000
Expense for transportation	2000
Expense for extra nourishment	1000
Damage to clothing	500
Expense for treatment	19450
Expense for bystander	1000
Pain and suffering	15000
Loss of amenities	10000
Disability	86400
Total	147350

4. Since we fix the monthly income at ₹2,500/-, for partial loss of earnings, he will be entitled to ₹15,000/-. As far as item No.6 is concerned, for expenses of bystanders, we refix the amount at ₹3400/-, since he was in hospital for a period of 34 days, @ ₹100/- per day. The Tribunal has granted ₹15,000/- for pain and suffering. It is a case where he has suffered very serious injuries including head injuries

and it is seen that the disability has been caused differently as far as the appellant is concerned. It is clear from the medical certificate that the disability has been assessed as hearing loss, neurological disability as well as orthopaedic disability corresponding to the injuries sustained by him. All these support the case of the appellant that the amount awarded towards pain and suffering is considerably low. We refix the amount as ₹25,000/-.

5. As far as the compensation for disability is concerned, it will be ₹1,63,200/- taking the multiplier as 17 and the disability as 32%. We find no justification to reduce the percentage of disability as done by the Tribunal since the certificate is very clear that the whole body disability has been assessed at 32.32%. We find from the certificate that for hearing loss, the disability has been assessed at 20%, for lack of memory and difficulty in walking, it is assessed at 10% and orthopaedic disability is assessed as 6%, totalling 36%. By reckoning the same and treating him as a physically handicapped person, the doctor has refixed the percentage of disability namely whole body at 32.32%. We do not agree with the finding of the Tribunal to reduce the

percentage of disability to 20%. Accordingly, we have arrived at the compensation. Lastly, as far as the the compensation for loss of amenities and enjoyment of life is concerned, it is submitted by the learned counsel for the appellant that he has lost hearing capacity of right ear and orthopaedic disability is also there. Since the accident is of the year 2000, we fix an amount of ₹25,000/- towards loss of amenities and enjoyment of life.

7. Accordingly, the compensation is recomputed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	15000
Expense for transportation	2000
Expense for extra nourishment	1000
Damage to clothing	500
Expense for treatment	19450
Expense for bystander	3400
Pain and suffering	25000
Loss of amenities	25000
Disability	163200
Total	254550 (Rupees two lakhs fifty four thousand five hundred fifty only)

8. 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 in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.