

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 1907 of 2014 ()

AGAINST THE AWARD IN OPMV 1439/2008 of ADDL. MACT, ERNAKULAM DATED
25-02-2014

APPELLANT/PETITIONER:

E.J.FRANCIS XAVIER AGED 24 YEARS
S/O.E.V.JOSEPH, ERASERRY HOUSE, KANNAMALI P.O.
KOCHI - 682 008, ERNAKULAM DISTRICT

BY ADVS.SRI.P.M.JOSHI
SRI.K.T.SAJU
SMT.SIJI K.PAUL

RESPONDENTS/RESPONDENTS:

1. E.M.SURENDRAN, AGED 35 YEARS
S/O.MADHAVAN, PALLIMATTOM ERAMPUZHA, EROOR (W) P.O.
THRIIPPUNITHURA, PIN - 682 306, ERNAKULAM DISTRICT.

2. A.V.PRAKASAN, AGED ABOUT 35
S/O.VAVA, ARAYASERRIL, PADINJATEMCHERRY
PADINJARE-MURI, VAIKOM - 686 141.

3. THE ORIENTAL INSURANCE COMPANY LIMITED
(B.O), PB NO. 8, JYOTHI
SUPER BAZAR, THODUPUZHA - 685 584.

R3 BY ADV. SRI.N.S.NAJEEB
R1 BY ADV. SRI.SURESH K.SREEDHAR (ATHANI)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1907 OF 2014

Dated this the 2nd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

In a case of personal injury sustained by the appellant, he is complaining of the inadequacy of compensation. As against the total claim of ₹ 2,75,000/-, ₹ 190516/- has been granted by the Tribunal.

2. The accident occurred on 17/08/2007 while he was riding motor cycle bearing Reg.No.KL/7-AK 3463 from Panampilly Nagar - Ernakulam. It was hit by a tempo traveller bearing Reg.No.KL 7 AS 5825.

3. The appellant was immediately taken to Indira Gandhi Co-operative Hospital, Ernakulam. From there he was admitted in the Medical Trust Hospital for better treatment.

4. In paragraph 8 of the award, his injuries have been noted as shown below :

1. Diffuse swelling of right knee with tenderness

2. Pain, oedema and tenderness of right knee
3. Avulsion fracture of tibial spine with ACL injury (Rt) knee
4. Tears of (a) Anterior cruciate ligament
5. Medial collateral ligament

5. Exts.A6, A7 and A8 are the documents concerning the period of treatment and other aspects. The inpatient treatment is from 17.8.2007 to 21.08.2007, 21.8.2007 to 2.9.2007, 19.9.2007 to 5.10.2007 and from 29.7.2007 to 4.8.2009 - a total of 36 days. Going by Ext.X1 disability certificate, the disability suffered permanently by the appellant is 6%. He was aged 24 years at the time of the accident and was working as a Computer Service Executive in Aldous Glare, Trade and Exports, Panampilly Nagar. The monthly income claimed is at ₹5,000/-. But no evidence was produced and therefore the Tribunal adopted his income as ₹4,000/- notionally. The same is under attack by the learned counsel for the appellant by pointing out that ₹5,000/- is reasonable. In the absence of documentary evidence, the Tribunal did not adopt ₹5,000/-. Therefore, we find no reason to interfere with the amount arrived at.

6. The Tribunal has granted compensation in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	16000
Transportation expenses	4000
Damage to clothing	1000
Extra nourishment	1000
Treatment expenses	90956
Bystander expenses	3600
Shock, pain and sufferings	15000
Permanent disability	48960
Loss of amenities and enjoyment in life	10000
Total	190516

7. The vehement argument raised is regarding the permanent disability suffered and also that his income should be reckoned concerning the future prospects. The same is opposed by the learned counsel for the Insurance Company. We are of the view that the income as on the date of the accident will have to be taken especially it is a case of personal injury. But the multiplier to be adopted is 18, instead of 17. As regards the bystander expenses, what is awarded by

the Tribunal is @ ₹100/- per day which we enhance to ₹250/- per day. For pain and suffering also, the appellant is entitled to more amount. In the light of the injury sustained and the period of treatment, we grant an amount of ₹40,000/- for pain and suffering. Lastly, the learned counsel sought for enhancement of compensation for loss of amenities and enjoyment in life. In the light of the permanent disability sustained, we enhance the same to ₹15,000/-.

8. Accordingly, the total compensation will be as follows :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	16000
Transportation expenses	4000
Damage to clothing	1000
Extra nourishment	1000
Treatment expenses	90956
Bystander expenses	9000
Shock, pain and sufferings	40000
Permanent disability	51840
Loss of amenities and enjoyment in life	15000
Total	228796 Rounded off to ₹..2,28,800/-

9. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already awarded within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly disposed of.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.