

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

MACA.No. 408 of 2008 ()

AGAINST THE AWARD IN OPMV 1033/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
THALASSERY DATED 22-11-2006

APPELLANT/PETITIONER:

P. RAJAN, S/O KRISHNAN, 49 YEARS,
VANNATHIKUNDU HOUSE, PALIKUNNU P.O.,
KANNUR DIST.

BY ADVS. SMT. K.K. CHANDRALEKHA
SRI. GOPAKUMAR. G.

RESPONDENT/RESPONDENT:

UNITED INDIA INSURANCE CO. LTD.
REP. BY ITS DIVISIONAL MANAGER BRANCH OFFICE
FASHION TOWERS, CALTEX KANNUR.

BY ADV. SRI. P. JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.408 OF 2008

DATED THIS THE 18th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Quantum of compensation in respect of the injuries sustained by the appellant is the subject matter of challenge in this appeal.

2. The appellant/claimant was working as a cleaner in the bus bearing No.KA 01-B-9600 driven by the 1st respondent, insured by the 2nd respondent and owned by the 3rd respondent. The case projected before the Tribunal by the claimant was that, when the bus reached a Railway gate on the way, which was lying closed at that point of time, he came out from the bus and was standing behind the bus. On opening the gate, the driver of the bus allegedly took the bus in a reverse direction which was only because of the negligence on his part, knocking down the appellant/claimant and causing serious injuries. This was sought to be compensated by filing the claim petition before the Tribunal.

3. The owner and driver of the bus sought to remain ex parte. The matter was contested only by the Insurance Company

on general grounds. The evidence adduced before the Tribunal consists of the oral deposition of the claimant as PW1, the documentary evidence as Exts.A1 to A7 produced from the part of the claimant, while the respondent Insurance Company sought to rely on Ext.B1 also. Disability was assessed at 5% by the Medical Board as borne out from Ext.X1. Based on the available materials on record, the Tribunal found that the accident was only because of the negligence on the part of the driver of the bus and proceeded to fix compensation accordingly.

4. It was contended by the appellant before the Tribunal that he was getting a monthly salary of ₹3,000/-. But the Tribunal reckoned only ₹2,000/- as the notional income and awarded the loss towards the disability, adopting 5% as the certified extent of disability and '15' as the multiplier (based on the age of the claimant as 42 years at the time of accident). Awarding amounts under several heads, the total compensation payable was fixed as ₹57,700/-, which was directed to be satisfied with interest @ 7% from the date of the petition i.e., from 29.6.2001 till realisation. This is stated as inadequate and hence this appeal.

5. Heard the learned counsel appearing for the appellant as well as the learned Standing Counsel for the Insurance Company.

6. The injuries sustained by the appellant and the consequences, as discussed in paragraph No.8 of the Award, are in the following terms:

" PW1 would submit that he had sustained fracture to his hip bone in the accident. Urinary bladder and ribs were jammed. Immediately after the accident, he was brought to Co-operative Hospital, Thalassery and treated there as an inpatient. Ext.A2 is the true copy of the Accident Register-cum-wound certificate issued from the above hospital. The injuries sustained to the petitioner noted in it as:- fracture inferior pubic ramus left. He was discharged on 26.8.2000. He was subjected to an operation for removing the blockage of urine. He was readmitted on 18.9.2000. He was reviewed thereafter several times. Further, the petitioner was admitted at the Medical College Hospital, Kozhikode. Ext.A3 series are the 2 Discharge Summaries and one Discharge Card. The first Discharge Summary is relating to his admission in the Co-operative Hospital Thalassery from 26.8.2000 to 2.9.2000. It is noted in it that on examination there is cut off at level of membranous urethra. The treatment given to him as noted as trocar SPC done emergently on 27.8.2000 under local anesthesia. Further, he was treated by applying

medicines. The 2nd Discharge Summary relating to his re-admission in the hospital from 18.9.2000 to 20.9.2000 due to traumatic stricture of membrane urethra. Cystoscopy done to him at that time. Tiny opening done. Guide wire could not be passed as patient had pain. He was treated with medicines at that time. There is one review to the petitioner on 28.10.2000 after the discharge. The discharge card is issued from the Medical College, Pariyaram. He was treated there as an inpatient from 17.1.2005 to 25.1.2005 due to Bronchiectasis. His treatment is not relating to the injuries sustained to him in the accident dated 26.8.2000. Ext.A6 is the Treatment Book issued from the Medical College Hospital, Kozhikode. He was admitted there from 13.1.2001 to 5.2.2001. Cystoscopy was also done to him from there. Further urethroplasty was also done. Catheter removed. Further he was treated conservatively by applying medicines. Ext.A4 series are the prescriptions dated 16.7.2005 and 19.2.2006 issued from the Madhavrao Scindia Hospital, Kannur. Those prescriptions are not relating to his treatment for the injuries sustained to him in the accident. Since he could not travel to Kozhikode, further he was treated at the Co-operative Hospital, Thalassery, according to PW1. One OP Card issued from the Co-operative Hospital is marked as Ext.A6. It is dated 22.9.2000. It is alleged that he was treated at Mangalore. There is no evidence to support this aspect. He did not produce any document to show that he was treated at Mangalore. Further he has stated that he has already spent ₹1½ lakhs

for his treatment. Ext.A7 series are the Inpatient Bill and Medical Bills for an amount of ₹2852.68. Some documents were missed from his possession, according to him. He is still continuing the treatment. There is no evidence that he was reviewed at the Medical College Hospital, Kozhikode. Ext.A1 is the Disability Certificate issued by the Medical Board, District Hospital, Kannur after examining the petitioner on 24.6.2006. On examination his fracture has been united. Now he is having incontinence. The Medical Board has assessed 5% permanent whole body disability to him. The injuries, hospitalisation, treatment and disability of the petitioner has been proved by Exts.A1 to A7 series and X1 documents. As such the petitioner is entitled for compensation."

7. The amounts awarded by the Tribunal under different heads as given in paragraph No.9 are as given below:

1.	Loss of earning	:	₹ 6000/-
2.	Transportation expense	:	₹ 2500/-
3.	Medical expense	:	₹ 5000/-
4.	Bystanders expense	:	₹ 4700/-
5.	Extra nourishment	:	₹ 1500/-
6.	Pain and suffering	:	₹ 20000/-
7.	Loss of earning capacity	:	₹ 18000

Total			₹ 57700
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8. The question is whether the award is liable to be termed as a 'just' award or not, to be in conformity with Section 168 of the MV Act.

9. It is true that the appellant did not produce any documentary evidence regarding the monthly salary, but the fact remains that his engagement as cleaner of the bus is not disputed by anybody. That apart, the claimant himself was examined as PW1. The accident was occurred on 26.8.2000. Considering the facts and circumstances, we find it appropriate to reckon the notional monthly income as ₹3,000/- as claimed by the claimant, which cannot be said to be arbitrary or unreasonable in any manner.

10. It is seen from the medical evidence let in, that, by virtue of the serious injuries sustained, there was much problem for the claimant/appellant even to pass urine and hence urethroplasty was done. The ordeal undergone by the appellant, according to this Court, would have necessitated loss of earning at least for a period of 5 months and hence we fix the loss of income as ₹15,000/-. After giving credit to the amount awarded by the Tribunal, the balance comes to **₹9,000/-** under this head.

11. The appellant had a case that the disability assessed by the Medical Board vide Ext.X1 was without considering the consequences resulted because of the damage/injuries caused to

the urinogenetal system. In the said circumstances, based on the submission made by the learned counsel for the appellant, he was caused to be examined by a Medical Board constituted by the Superintendent of the Medical College Hospital, Calicut, pursuant to an interim order passed by this Court on 25.6.2015. Based on such examination, report of the Medical Board has been made available through the Registrar (General), which shows that the percentage of permanent disability is only 5% and nothing more. In the said circumstances, we do not find any reason to deviate from the permanent disability fixed and adopted by the Tribunal.

12. However, based on the enhancement of notional monthly wage by this Court, compensation for disability requires to be varied. On reworking the compensation as above, it comes to ₹27,000/- ($3000 \times 12 \times 5 / 100 \times 15$). After giving credit to the sum of ₹18,000/- awarded by the Tribunal, the balance comes to **₹9,000/-**. It is awarded accordingly. This Court is of the firm view that the amount of ₹20,000/- awarded by the Tribunal towards pain and suffering requires enhancement by **₹10,000/-**, which is awarded accordingly. Similarly, no amount has been awarded by the Tribunal towards loss of amenities. We find it

appropriate to grant **₹25,000/-** under this head.

In the above circumstance, total balance compensation payable under the relevant heads comes to **₹53,000/-**. Interest awarded by the Tribunal is only at the rate of 7% per annum, which at that point of time ought to have been 7.5% by virtue of the rulings rendered by the Apex Court. Interest being ordered now, by virtue of the subsequent pronouncements of the Supreme Court, is at the rate of 9%. As it stands so, the enhanced/balance compensation shall be paid with interest @ 9% from the date of petition, till the date of satisfaction. Since the policy is admitted, the Insurance Company shall deposit the due amount within 'one month' from the date of receipt of a copy of this judgment.

The appeal is disposed of accordingly.

Sd/-

**P.R.RAMACHANDRA MENON,
JUDGE**

Sd/-

**ANIL K.NARENDRA,
JUDGE**

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