

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

MACA.No. 484 of 2008 ()

AGAINST THE AWARD IN OPMV 855/2005 of ADDL. DISTRICT COURT, MANJERI
DATED 07-11-2007

APPELLANT/PETITIONER::

IBRAHIMKUTTY @ IBRAHIM, S/O. ABDULLA,
AGED 44 YEARS, CHOLAYIL THAZHATHETHIL HOUSE
THANGALPADY P.O., THRIKKANNAPURAM, THAVANUR
MALAPPURAM DISTRICT.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFAEEK

RESPONDENTS/RESPONDENTS::

1. C.M. MOIDEENKUTTY, S/O. KUNHALI,
CHAKKATTUMUKKIL HOUSE, P.O. THRIKKANNAPURAM, THAVANUR
MALAPPURAM DISTRICT.

2. K. UNNIKRISHNAN, S/O.KRISHNAN NAIR,
KANDATH HOUSE, P.O. THRIKKANNAPURAM
MALAPPURAM DISTRICT.

3. UNITED INDIA INSURANCE COMPANY LTD.,
BR.WESTERN WING AMBADI BUILDING, PONNANI P.O.
PONNANI.

R3 BY ADV. SRI.K.SANDESH RAJA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.484 OF 2008

Dated this the 19th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The quantum of compensation granted by the Tribunal alone is under challenge in this appeal filed by the claimant. He sustained injuries in a accident which occurred on 10.05.2005, while he was riding the motor cycle bearing Reg.No.KL-10 Q-7800 at 10 p.m. When he reached Kalady, a jeep bearing Reg.No.KL-10 H - 5232 dashed against the motor cycle.

2. The appellant was immediately taken to West Fort Hospital, Thrissur and was treated as inpatient for a period of 11 days. The total compensation granted by the Tribunal is ₹90,000/- against the claim of ₹2,50,000/-.

3. The appellant was aged 42 at the time of the accident. Before the Tribunal, the appellant had produced Ext.A6, copy of the driving licence which enables him to drive light motor vehicle, heavy

passenger vehicle and heavy goods vehicle. In spite of those items of evidence, the Tribunal fixed the monthly income only @ ₹3,000/- which according to the learned counsel for the appellant is too meagre.

4. The learned counsel for the Insurance Company submits that there is no documentary evidence to prove the same. According to us, what was claimed before the Tribunal being ₹4,500/- the same is reasonable and we adopt the same.

5. One of the arguments raised by the learned counsel for the appellant is regarding the reduction of the percentage of disability from 10% to 5% by the Tribunal. He had sustained subtrochanteric fracture of left femur with diaphyseal extension. Ext.A5 is the copy of the disability certificate, where the Doctor has noticed malunion of fracture as well as stiffness of the left hip joint. After verifying the same, the Tribunal was of the view that the stiffness of the left hip joint is due to the malunion and therefore 5% alone can be the disability, which we concur. No amount has been granted towards loss of amenities and enjoyment of life and future treatment. We have gone through Ext.A4 certificate. It is evident that the appellant was put on upper tibial

skeletal traction immediately and on 11.05.2015, Recon nail fixation of left femur fracture was done. Therefore, evidently he will have to undergo another surgery. Hence a reasonable amount can be granted for future treatment also.

6. Since the appellant sustained severe fracture, he will be entitled to more amount for pain and suffering and in view of the disability, he will be entitled to compensation for loss of amenities also. The age being 42, the correct multiplier is 14, which we adopt.

7. We therefore refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Disability	37800 (4500 x 12 x 14 x 5%)
Loss of amenities	10000
Future treatment expenses	10000
Transportation	1500
Damage to clothing	500
Bystander's expenses	1650 (11 x 150)
Medical bills	33800
Extra nourishment	2000

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of income for three months	13500
Pain and suffering	35000
Total	145750 (Rupees one lakh forty five thousand seven hundred fifty only)

8. The amount will carry interest @ 9% per annum from the date of petition. The Tribunal had held that the Insurance Company is liable to satisfy the award and we concur with the same. We further direct the Insurance Company to deposit the amount with interest within a period of three months and we permit the appellant to withdraw the amount also.

The appeal is accordingly allowed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE