

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 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

MACA.No. 503 of 2008 ()

**AGAINST THE AWARD IN OP(MV) 1669/2002 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,PERUMBAVOOR DATED 18-09-2007
APPELLANT/CLAIMANT:**

**JIBIN JOHN, S/O.JOHN, MANADAN HOUSE,
KARINGANTHURUTH, ALANGAD VILLAGE.**

BY ADVS.SRI.K.A.SHAMSUDEEN

RESPONDENTS/RESPONDENTS:

- 1. P.OBENNY, S/O.DEVASY, PALLIPPADAN
HOUSE, PAVATTATTUKUNNU, P.O.KARUKUTTY
ANGAMALY.**
- 2. SUKU, S/O.NARAYANAN, SRAMBIKKAL HOUSE,
NEAR ST.MARY'S CHURCH, ELAVOOR, PARAKKADAVU.**
- 3. THE NEW INDIA ASSURANCE CO.LTD.,
KODAVATH SHOPPING CENTRE, ALUVA - 683 101.**

R3 BY ADV. SRI.P.K.BABU

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.503 of 2008

Dated this the 29th day of May, 2015

J U D G M E N T

Ramachandran Nair, J.

The insured claimant is the appellant in this appeal. As against the claim of Rs.9,00,000/-, the Tribunal has awarded a total compensation of Rs.4,02,875/- under different heads.

2. The appellant was aged 23 at the time of accident, which occurred on 17.6.2002. He was riding a motorcycle bearing registration No.MH-04-AV-3426 from south to north through Mannam-Thathappilly road near Athani junction when a lorry bearing registration No.KL0-6807 hit the motorcycle and he was thrown down on the road. The following are the injuries sustained by him in the accident:

- “1. Multiple abrasion chin about 3 - 4 cm each
2. Abrasion left side 2 cm.
3. Tooth fracture to lower mandible
4. Bleeding from oral cavity”

He was treated immediately in the Ernakulam Medical Centre.

3. The main argument raised by the learned counsel for the appellant is that he had to be treated in four different hospitals and because of the injuries to the larynx his power of speech is also affected and has lost his voice to a considerable extent which is clear from the disability certificate. It is submitted that the appellant was working as an Instructor in the trade Carpentry in Xavier Technical Training Institute, Quilandy and was earning Rs.4,500/- per month. But the Tribunal has reckoned the monthly income only at Rs.2,500/-. The learned counsel relied on Ext.A16 which is the National Trade Certificate issued from Industrial Training Institute, Calicut, Ext.A17 which is the certificate showing his qualification in Typewriting (Higher) English and Ext.A18 Experience cum conduct certificate issued from a furniture institute, Calicut and Ext.A19 salary certificate issued from Calicut Diocese Social Service Society in support of a higher compensation on the basis of his qualification and the emoluments.

4. Exts.A1 to A19 have been marked in evidence through PW1, who is the petitioner. No evidence was

adduced by the respondents. Going by the evidence, learned counsel for the Insurance Company submitted that the quantification of monthly income as well as the amount towards permanent disability and other heads is adequate. It is submitted that his disability will not in any way affect his future life also.

5. The appellant was initially treated in Ernakulam Medical Centre, Palarivattom from 17.6.2002 to 6.7.2002. There endotracheal intubation and tracheotomy were done. C.T. scan showed fracture of thyroid cartilage and haematoma in the larynx. Fibre optic laryngoscopy showed free pieces and repair of the fracture was done later. He was advised on discharge to attend Madras Research Foundation, for further management. His treatment therein is proved through Ext.A10 series which are discharge certificates. The period of treatment in the said hospital are on the following dates:30.7.2002 to 31.7.2002, 9.8.2002 to 13.8.2002, 26.9.2002 to 28.9.2002, 14.10.2002 to 15.10.2002, 22.10.2002 to 23.10.2002, 28.10.2002 to 30.10.2002. It is clear from the discussions from the

evidence by the Tribunal that various treatment procedures including surgeries were done during hospitalisation.

6. The certificate Ext.A15 issued by the Medical Trust Hospital, Ernakulam will show that he has got post traumatic scar over the face, neck and nose with depressed tracheotomy scar. Thus it is clear that he had availed treatment in three different hospitals. The disability certificate issued from the Medical Board of the General Hospital, Ernakulam states that his voice is affected due to laryngeal trauma which could not be further corrected. His permanent total disability is assessed to be 20%. This is the factual circumstances under which the claim for compensation was pursued by the appellant.

7. We find from the award that the Tribunal has granted compensation under different heads. The first question which has to be addressed is whether the monthly income arrived at after considering his employment as an Instructor and after assessing the documentary evidence at Rs.2,500/- is reasonable. The claim of Rs.4,000/- per month cannot be said to be exorbitant. Learned counsel for the

appellant submitted that the qualification as well as the potential of the person concerned should have been considered by the Tribunal in fixing a proper figure. Even though it is submitted by the learned counsel for the Insurance Company that the amount fixed as monthly income at Rs.2,500/- is correct, we are of the view that a proper enhancement ought have been granted in tune with the qualification and experience of the appellant. He had National Trade Certificate in Carpentry and he had also passed typewriting higher. Therefore, we adopt the monthly income at Rs.3,500/-. He was aged only 23 at the time of accident and hence the multiplier going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** will be 18. Even though the learned counsel for the appellant submitted that the functional disability will have to be reckoned as 100%, in the absence of assessment of any functional disability in the certificate, we cannot agree with the said contention. Therefore, we adopt the percentage of disability as 20 itself. Even though we have gone through the evidence of PW1 it

has not been fully explained by him whether he is unable to work or not. We therefore adopt the percentage of disability as 20 for the purpose of assessing the compensation. But we find that the amount granted by the Tribunal for pain and suffering is too low. As we have already noticed, on different occasions he had undergone treatment including surgery. Therefore, we are of the view that a proper enhancement is necessary. Accordingly, we fix the amount at Rs.60,000/-. The next item is transportation expenses, for which, the Tribunal has awarded Rs.10,000/-. The treatment including that is taken in the hospital at Madras will have to be considered in this context and he had to travel to Madras on different occasions. We accordingly fix an amount of Rs.15,000/- towards transportation charges. The loss of earnings going by the award is Rs.15,000/- which is calculated at the rate of Rs.2,500/-. We enhance the same to Rs.21,000/-, by taking the monthly income at the rate of Rs.3,500/-. Towards loss of amenities also only Rs.30,000/- has been granted. He will have to cope up with the disability

throughout his life and he sustained the injury at the age of 23. Therefore we enhance the same to Rs.60,000/-.

8. One of the aspects pointed out by the learned counsel for the appellant is regarding non granting of any amount towards dis-figuration. The reason stated by the Tribunal for not granting the amount is that the scar can be easily removed for which only an amount of Rs.8,000/- has been granted. The said conclusion is without any support of medical opinion. It is evident from the discussion from evidence that he has got scars on face, neck and nose. Therefore if at all any amount has been granted it will have to be spent for future medical expenses. Therefore we grant an amount of Rs.10,000/- for disfiguration and for future treatment we grant an amount of Rs.25,000/- since he requires continuous treatment for improving the power of speech also. For bystander's expenses we grant an amount of Rs.5,700/- (Rs.150/- per day for 38 days). One of the items left out by the Tribunal is loss of prospects of marriage, for which we provide an amount of Rs.30,000/-. Therefore, we refix the compensation as shown below:

Head of claim	Amount awarded in Rs.	Amount re-fixed in rupees
Treatment expenses	193125	193125
Loss of earnings	15000	3500 x 6 21000
Transportation expenses	10000	15000
Damage to clothings	250	250
Extra nourishment	1500	3000
Pain and suffering	30000	60000
Loss of amenities	30000	60000
Eviction of scar	8000	8000
Attendant's charges	3000	38 x 150 5700
Disability	102000	3500 x 12 x 18 x 20/100 151200
Future treatment	10000	25000
Disfiguration		10000
Prospectus of marriage		30000
Total		582275 (Rupees five lakh eighty two thousand two hundred and seventy five only)

Therefore, the total amount of compensation will be Rs.5,82,275/- (Rupees five lakh eighty two thousand two hundred and seventy five only). The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation. There will

be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/