

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

MACA.No. 1805 of 2009 ()

AGAINST THE AWARD IN OPMV 102/2002 of ADDL.MACT, THALASSERY
DATED 30-01-2009

APPELLANT(S): CLAIMANT

K.C.MARY, W/O BABY,
CHIRAKKALPURAYIDAM, P.O.KOLAYAD, KANNUR DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT(S):

1. P.V.GEORGE,
PAYYAPPILLIL HOUSE, P.O.OKKAL, PERUMBAVOOR.

2. JOHNY, S/O GEORGE,
KATHALIPARAMBIL VEEDU, GANDHIGRAM, P.O.IRINGALAKKUDA.

3. NATIONAL INSURANCE CO. LTD.,
KANNUR.

(NAME OF R1 AND R2 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA
176/2014 DATED 28.1.2014)

R,R3 BY ADV. SRI.MATHEWS JACOB (SR.)

R,R3 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1805 of 2009

Dated this the 12th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is in appeal before this Court aggrieved by the inadequacy of compensation. As against the claim for Rs.10 Lakhs for the personal injuries sustained by her, an amount of Rs.4,61,100/- has been awarded by the Tribunal. A summary of the details is necessary to go into the contentions of the respective parties.

2. The accident occurred on 29.4.2001 while the appellant was travelling in a jeep bearing Reg. No.KL-13/D/6167. The offending vehicle is a lorry bearing Reg. No.KL-7/D/8224 which, while coming through the rear side of the jeep, hit the same causing the jeep to overturn. The lorry also got overturned and fell over the jeep. The appellant sustained serious injuries including fracture.

3. The appellant was an aided school teacher working in St.

Cornelius High School, Kolayad, getting a monthly salary of Rs.11,650/-.

4. The Tribunal found negligence as against the driver of the lorry. Before the Tribunal, the appellant was examined as P.W.1 and Exts.A1 to A12 have been marked. Ext.X1 is the disability certificate issued by the Medical College, Pariyaram wherein the disability is shown as 29%.

5. Going by the wound certificate, the appellant had sustained Type III fracture left femur, right fibula, etc. To prove the details of the accident she has produced Ext.A1 copy of F.I.R. and Ext.A2 case summaries from the Co-operative Hospital, Thalassery and Specialist Hospital, Ernakulam. It is submitted by the learned counsel for the appellant tht she was treated in Co-operative Hospital, Thalassery as well as Specialist Hospital, Ernakulam and had to be under treatment for a period of two years. The inpatient treatment is for a period of 113 days. In between, she was treated in Al-Shifa Hospital, Perinthalmanna which is evidenced by Exts.A4 cash bill and A5 I.P. Card. To prove her salary, she has produced Ext.A10 series.

6. The following are the major injuries sustained by the appellant:

- “1. Type III open fracture left femur with vascular injury;
2. Type III open fracture right fibula;
3. Laceration skull
4. Laceration right ankle;
5. Fracture right ischium; and
6. Fracture Metatarsals.

It is the contention of the appellant that because of the injuries she could not get the promotion as Headmistress, but regarding the same there is no other evidence before the Tribunal. The Tribunal has granted compensation in the following manner:

1. Permanent disability	: Rs. 69,600/-
2. Pain and suffering	: Rs. 20,000/-
3. Loss of amenities	: Rs. 10,000/-
4. Medical expenses	: Rs.1,66,000/-
5. Loss of income	: Rs.1,92,500/-
6. Other eligible counts	: <u>Rs. 3,000/-</u>
Total	: Rs.4,61,100/-
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7. The contention raised by the learned counsel for the appellant

is regarding the inadequacy of compensation for permanent disability, pain and suffering and loss of amenities and non grant of amount towards transportation charges as well as bystander's expenses.

8. As far as the age of the appellant is concerned, she was aged 52. She had 3-4 years of service in the school. It is seen from the award of the Tribunal in paragraph six that her thigh bone and head were fractured and right ankle was also fractured. Steel rod was fixed on her leg and she was using crutches. She was taking physiotherapy and even at the time of examination before the Tribunal she was getting the said treatment. According to learned counsel for the appellant, the appellant had to take two years continuous treatment to recover and there is difficulty to travel. This is also a case where the disability has not affected her career.

9. For assessing the compensation, learned counsel for the appellant submitted that split multiplier cannot be taken. Learned counsel for the insurance company pointed out that the appellant had only 3 years of service left. Since the appellant was aged 52 at the time of accident, the multiplier will be 11. The Tribunal has taken a notional

income at the rate of Rs.2,500/- per month which appears to be too low. In a case where there is no loss of earning power, this Court will have to consider various aspects including the claim for compensation for permanent disability, coupled with due compensation for pain and suffering and loss of amenities and enjoyment of life. The above principles have been declared by the Apex Court in various judgments including the recent decision in **Kumari Kiran through her father Harinarayan v Sajjan Singh and others** {(2015) 1 SCC 539}.

10. The serious dispute is regarding the notional income taken. Learned counsel for the insurance company submitted that as the appellant is entitled to draw pension, there will not be any reduction of pension due to the disability. For assessing just and fair compensation, we will have to balance various aspects. The pension she will be entitled, will be nearly 50% of the salary. Therefore, to arrive at a just and reasonable figure after considering the imponderables also, we are of the view that for the purpose of assessing compensation for permanent disability an amount of Rs.6,500/- can be fixed as the monthly income. The percentage of disability is 29. Therefore, the

compensation for permanent disability will be Rs.2,48,820/- (Rs.6500 x 12 x 11 x 29/100). As far as bystander's expense is concerned, nothing has been granted by the Tribunal. She was treated as inpatient for a period of 113 days. We grant amount at the rate of Rs.150/- per day, viz. Rs.16,950/- (rounded off to Rs.17,000/-). The next item is transportation expenses. As regard the said item and also for medical expenses, the total claim is for Rs.3 lakhs. It is seen that she was treated in hospitals at Thalassery, Ernakulam and Perinthalmanna. She had to attend 15 reviews also. It is seen that she was advised physiotherapy for a long time and the period of treatment extended upto 2 years and she had availed commuted leave as well as leave on loss of pay. In that view of the matter, according to us, a reasonable amount ought to have been granted towards transportation expenses. Considering the length of treatment and the number of times she had to visit the hospitals, we find that an amount of Rs.15,000/- will be reasonable under this head and we grant the same.

11. As far as pain and suffering is concerned, what is awarded is only a sum of Rs.20,000/- The evidence is to the effect that she

sustained serious injuries, had undergone different procedures including surgeries and had been under treatment for a period of two years. It is submitted by the learned counsel for the appellant that the appellant had to suffer much physical pain and agony during this period. We find that an amount of Rs.75,000/- will be an adequate compensation under the head of pain and suffering.

12. As far as loss of enjoyment and amenities in life also, since the disabilities are of 29% it will affect her much. Therefore, we grant an amount of Rs.60,000/- towards compensation for loss of amenities and enjoyment in life and shortened expectation. No amount has been granted towards extra nourishment and the last item granted by the Tribunal is Rs.3,000/- under the head “other eligible counts”. Since the period of treatment extends two years, we are of the view that she will be entitled for an amount of at least Rs.10,000/- under the head of extra nourishment, which we grant.

Therefore, the total compensation will be refixed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Permanent disability	69600	248820
Pain and suffering	20000	75000
Loss of amenities	10000	60000
Medical expenses	166000	166000
Loss of income	192500	192500
Bystander expenses		17000
Other eligible counts	3000	10000 (extra nourishment)
Transportation charges		15000
Total		784320 (rounded off to 784300)

(Rupees Seven lakhs eighty-four thousand and three hundred only)

The appeal is allowed as above. The enhanced amount will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation, less the amount already deposited before the Tribunal, within a period of three months. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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