

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

MACA.No. 1830 of 2009 ()

AGAINST THE AWARD IN OPMV 1134/2002 of M.A.C.T., PALAKKAD
DATED 07-12-2007

APPELLANT(S)/PETITIONER:

RAMACHANDARN, S/O. NACHIMUTHU,
RESIDING AT "PRAKASH NILAYAM", LINGE PETTER, MADAM
CHAKKANTHARA, NEAR MARIYAMMAN KOVIL, PALAKKAD.

BY ADVS.SRI.V.CHITAMBARESH (SR.)
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.C.A.ANOOP

RESPONDENT(S)/RESPONDENTS:

1. A.SHAHUL HAMEED, S/O.ABDUL RAHIMAN,
RESIDING AT VARKATH NIVAS, TC 39/704, M.N.P.COMPOUND
CHALAI, THIRUVANANTHAPURAM.

2. HAJA, S/O. SAIDH MOHAMMED,
RESIDING AT H.NO.39/1460, KARIMADAN COLONY, CHALAI
THIRUVANANTHAPURAM.

3. UNITED INDIA INSURANCE COMPANY LIMITED,
P.B.NO.552, MALANKARA BUILDING, V.J.T.HALL ROAD
PALAYAM, THIRUVANANTHAPURAM.

R,R1 & 2 BY ADV. SRI.M.SREEKUMAR
R3 BY ADV. SMT.DEEPA GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1830 of 2009

Dated this the 3rd day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant in O.P.(MV) No.1134/2002 on the file of the Motor Accidents Claims Tribunal, Palakkad has come up in appeal, aggrieved by the inadequacy of compensation. This is a case where the left leg of the claimant was amputated in the accident.

2. The details show that the accident occurred on 30.5.2002 at about 2.30 p.m. in Kadamkode - Chittur public road. Along with another person, he was travelling as a pillion rider in a motor bike bearing Reg. No.KRG 2876. It was hit by a jeep bearing Reg. No. KL-01/T 8488 at the National Highway junction. He was removed to the Fort Hospital, Palakkad and thereafter to the Ganga Hospital, Coimbatore. He was treated in P.S.G. Hospital, Coimbatore also and below knee the left leg was amputated. As against the total claim of Rs.8,75,500/-, the Tribunal has awarded an amount of Rs.4,21,671/-,

out of which Rs.2,33,971/- represents the expenses for medical treatment.

3. Ext.A11 is the discharge summary and in paragraph 10 of the award the following injuries have been mentioned:

- “1. Communitied fracture both bones lower 3rd left leg;
2. Communitied fracture 1st metacarpal and calcaneum left foot;
3. Anterior subcoralid dislocation left shoulder;
4. Spiral wedge fracture left shaft of femur;
5. Fracture left patella, fracture lateral tibial left side; and
6. L5 avulsion fracture.”

The Tribunal has recorded that the appellant had undergone prolonged treatment in Palakkad and Coimbatore hospitals. He was examined as P.W.1 also.

4. Learned counsel for the appellant submitted that the appellant was a merchant in cloth and vegetables and the income claimed was at Rs.7,500/- per month. The Tribunal, in spite of the evidence of P.W.1, fixed a notional income only at Rs.2,000/- per month.

5. Learned counsel for the insurance company submitted that there is no cogent evidence in the matter and therefore the assessment by the Tribunal cannot be said to be incorrect.

6. Since the appellant had given evidence as P.W.1 and he also deposed that he used to earn Rs.200-300/- per day from his business, it cannot be said that the claim is totally exorbitant. The accident occurred in the year 2002. We, therefore, fix the monthly income at Rs.4,000/- for the purpose of assessing compensation. The disability, going by medical certificate Ext.X1, is 30%. There is amputation below knee also. The multiplier will be 15. Thus, the amount of compensation towards permanent disability will be Rs.2,16,000/- ($4000 \times 12 \times 15 \times 30/100$)

7. Apart from the compensation for permanent disability, he is entitled for more amount towards loss of amenities, pain and suffering and disfigurement. The Tribunal has granted only a sum of Rs.10,000/- for loss of amenities and disfigurement. Evidently because of the amputation, he will not be able to move around as freely as before and

it will definitely restrict his movements. It has resulted in disfigurement to the left leg also. Rs.50,000/- each and Rs.20,000/- will be adequate compensation under these heads.

Therefore, we refix the compensation in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Loss of earnings	2000	4000
Transportation charges	5000	5000
Extra nourishment	2500	2500
Damage to clothing	500	500
Bystander's expenses	2500	4000
Medical expenses	233971	233971
Pain and suffering	30000	50000
Loss of amenities	10000	50000
Disfigurement	10000	20000
Permanent disability	115200	216000
Total		585971 (rounded off to 585970)

(Rupees Five lakhs eighty-five thousand nine hundred and seventy only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition and the insurance company is directed

to deposit the amount, less the amount already deposited before the Tribunal, within a period of three months. On such deposit being made, the appellant is entitled to withdraw the same.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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