

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

MACA.No. 1831 of 2009 ()

AGAINST THE AWARD IN OPMV 1284/2005 of M.A.C.T OTTAPPALAM DATED
13-11-2008

APPELLANT/PETITIONER:

SAIDALAVI, S/O.MUHAMMED,
AGED 39 YEARS, KULAMULLI HOUSE, VARODE POST
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR

RESPONDENTS/RESPONDENTS 1 AND 2:

1. HAMZA, S/O.YOOSAF,
AGED ABOUT 56 YEARS, ADHIKARIVALAPPIL HOUSE
KARAKKAD POST, ONGALLUR, PATTAMBI
OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. THE NATIONAL INSURANCE COMPANY
LIMITED, IIND FLOOR, AMBIKA ARCADE
M.G.ROAD, THRISSUR.

R2 BY ADV. SRI.PMM.NAJEEB KHAN
R1 BY ADV. SRI.R.SREEHARI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1831 OF 2009

Dated this the 9th day of January, 2015

JUDGMENT

Asha, J.

Appellant is the injured in a motor vehicle accident. The accident occurred on 19.9.2005 on collision of the motor cycle in which the appellant was riding with a car which came from the opposite side. Very serious injuries were sustained on the appellant, as can be seen from the disability certificate itself, which is produced as Ext.A25, apart from Ext.A11 wound certificate. The appellant was immediately taken to Al-Shifa Hospital, Perinthalmanna and was treated there for the period from 19.9.2005 to 8.10.2005. Almost all parts of the body sustained fractures, as seen from paragraph 10 of the award. It is also seen that the injuries resulted in multi trauma post, RTA coupled with multiple intracerebral contusions. The injuries have been proved before the Tribunal by Exts.A11 to A23 certificates and medical prescriptions. His disability as assessed by the Orthopaedic surgeon is 21% (whole body).

2. The disability evaluation by the Orthopaedic surgeon who was examined as PW3 is as follows :

1. United fracture of dislocation of (L)
shoulder with pain and stiffness of shoulder - 3
2. United 2nd and 3rd metacarpal with stiffness
of 2nd, 3rd MCP (R) - 2
3. United fracture of patella (R) with
stiffness and pain - 2
4. United posterior Intercondyler eminence
fracture of (R) knee with ACI, laxity (grade I) (R) - 5
5. United tibial condyle fracture (L) with pain and
stiffness of (L) knee - 4
6. Instability in (L) knee joint (ACL) laxity grade I - 2
7. Head injury sequelae - 4
8. United fracture of fibula with pain - 1

23

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3. It is seen that the appellant was bed ridden and on non-weight bearing for a period of three months after he was discharged from the hospital on 8.10.2005. The whole body disability was taken as 6% for the purpose of calculation of compensation for disability. The appellant was working as a teacher in the Madrassa attached to the Yatheekhana Agathi Mandiram. He has produced Ext.A26 certificate showing that he was drawing a salary of Rs.3250/-. The Tribunal awarded a sum of Rs. 1,15250/- towards compensation reckoning his income as Rs.2,500/- per month.

4. The appellant was a 35 year old teacher at the time of the accident. It is stated that he lost his employment on account of the accident. This appeal is filed seeking enhancement of compensation on the ground that the amounts awarded towards compensation under various heads are thoroughly inadequate.

5. It is stated that there was no reason for not reckoning the income as shown in Ext.A26 certificate and for not reckoning his disability as certified in Ext.A25 certificate.

6. We heard the learned counsel for the Insurance Company also. It is seen that the amount awarded by the Tribunal under various heads are thoroughly inadequate. The appellant has sustained very serious injuries all over his body on account of the various fractures and he was under bed rest as an inpatient in the hospital during which various surgeries were also undergone and he was under complete bed rest for a considerable period thereafter also. The Tribunal has awarded a sum of Rs.20,000/- alone towards pain and suffering and loss of amenities. Considering the nature of the injuries and the prolonged treatment undergone, we find it necessary to enhance this amount to Rs.50,000/-. The Tribunal has reckoned the income as Rs.2,500/- alone per month, despite Ext.A26 certificate. We find it necessary to fix the income of the appellant as Rs.3,000/- for the purpose of compensation towards loss of earnings as well as for disability. The appellant will therefore be entitled to get a sum of Rs.120960/- ($3000 \times 12 \times 16 \times 21\%$) towards disability. Going by the nature of the treatment undergone by the appellant while in the hospital as well as thereafter we find that the appellant would have been unable to carry out any

work atleast for a period of four months. Therefore he will be entitled to a sum of Rs.12,000/- towards loss of earnings for the said period reckoning the income as Rs.3,000/-. Towards bystander's expenses, the Tribunal has awarded only a sum of Rs.3000/- for a period of 20 days. We find that a sum of Rs.4,000/- will be admissible reckoning Rs.200/- per day. Similarly towards loss of amenities and enjoyment of life, the Tribunal has not granted any amount . Going by the disability incurred by the appellant as well as the injuries suffered by him, the appellant would not be able to continue the normal enjoyment of life. Therefore we find it just to award a sum of Rs.15,000/- towards loss of amenities and enjoyment of life.

7. Accordingly, the appellant will be entitled to compensation as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transporation, Extra nourishment & damage to clothes	4000
Pain and suffering	50000
Disability	120960
Loss of earnings	12000
Bystander's expenses	4000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of amenities	15000
Medical expenses	54450
Total	260410 (Rupees two lakhs sixty thousand four hundred ten only)

8. The amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited, if any, within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

