

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 1497 of 2010 (R)

AGAINST THE AWARD IN OPMV 2730/2005 of M.A.C.T., KOZHIKODE DATED
9.10.2009

APPELLANT/PETITIONER:

RATNAKUMARI,
W/O.SIVANANDAN, AGED 68 YEARS, MARUTHOLI HOUSE
PERUMPOYIL, PO.KAKKUR, KOZHIKODE DISTRICT.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU
SRI.K.R.RANJITH

RESPONDENTS/RESPONDENTS:

1. T.K.MAMMU HAJI, S/O.UMMERKUTTY HAJI,
THARAKKULATH HOUSE, KODATHAI BAZAR, PO
THAMARASSERY, KOZHIKODE DISTRICT.

2. NATIONAL INSURANCE COMPANY LTD,
NOOR COMPLEX, ARAYADATHUPALAM, MAVOOR ROAD
KOZHIKODE DISTRICT.

R2 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1497 OF 2010

Dated this the 1st day of June, 2015

JUDGMENT

Ramachandran Nair, J.

In this appeal by the claimant, the appellant claims enhancement of compensation. It is a case where the accident occurred on 1.7.2005 at about 12.30 p.m. The appellant was travelling in a tourist car from Bangalore to Kozhikode. There were other passengers and at a place called Ekarool, the offending vehicle, a tipper lorry bearing Reg.No. KL 11/T 2030 came from the opposite side and hit the car. Injuries were caused to the other passengers and she was admitted in the MIMS hospital for treatment. The appellant along with others had filed applications for compensation and the Tribunal disposed of the all the cases together by a common judgment.

2. The period of treatment is from 1.7.2007 to 25.7.2007. At the outset the learned counsel for the appellant submitted that even though the appellant had produced medical bills to the tune of

₹73,255/- and documents have been marked in evidence as Ext.A5, there is an omission by the Tribunal to consider the same.

3. It is evident that the appellant had sustained the following injuries :

- a. Haematoma right parietal region
- b. Tenderness over the left parasternal area
- c. Pain and swelling in the right shoulder
- d. Contusion right shoulder
- e. Deformity of the right lower leg
- f. Movements painful
- g. Pain and bleeding from the right leg
- h. Fracture tibia and fibula (R) middle third lower junction.
- i. I cm. Long wound over the anterior aspect of shin over fracture site with echymosis and contusion of skin all around.

4. The permanent disability has been assessed as 11%. The appellant was aged 65 at the time of the accident. Therefore, the multiplier will be 7 going by the judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**. The Tribunal has

taken the monthly income of the appellant as ₹2,000/-, which we enhance to ₹2,500/- for the purpose of fixing the disability compensation reasonably. Accordingly, the compensation under the head of disability will be ₹ 23,100/- (2500 x 12 x 7 x 11%) We enhance the amount awarded towards pain and suffering to ₹35,000/- in the light of the period of treatment as well as the seriousness of the injuries . We grant an amount of ₹6,250/- (250 x 25) towards bystander's expenses. In view of the injuries sustained and the percentage of disability, we award a reasonable amount of ₹30,000/- towards loss of amenities.

5. Accordingly, the total compensation is refixed in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport to hospital	1000
Bystander's expenses	6250
Damage to clothing	1000
Treatment expenses	79004 (73255 + 5749)
Pain and suffering	35000
Disability	23100

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of amenities	30000
Total	175354 Rounded off to ₹..1,75,350/- (Rupees one lakh seventy five thousand three hundred fifty only)

6. The enhanced compensation will carry interest @ 9% per annum from the date of petition. Since the Insurance Company is found liable to compensate the appellant as there is coverage under the policy, we direct the Insurance Company to deposit the amount within three months and we permit the claimant to withdraw the amount also.

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

T.R.RAMACHANDRAN NAIR, JUDGE

SV

K.P.JYOTHINDRANATH,JUDGE