

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 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

MACA.No. 2089 of 2014 (F)

**AGAINST THE AWARD IN O.P.NO.1824/2011 OF MOTOR ACCIDENT CLAIM TRIBUNAL,
ERNAKULAM DATED 10-01-2014**

APPELLANT(S)/PETITIONER :-

**ASOKAN.P.K., AGED 43 YEARS,
S/O. KRISHNAN.P.K., PALAKKAPADAM,
EAST OF CEMETERY JN.,
COCHIN-18.**

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS :-

- 1. STEPHEN PINHEIRO,
S/O. KASPER PINHEIRO,
NO.4 C/22, PARRIE NAGAR,
OLD SUNGAM. BYE-PASS,
RAMANATHAPURAM,
COIMBATORE - 641 045. (DRIVER OF TN 66A-6411 MAHINDRA AND MAHINDRA
XYLO E4 MOTOR CAR). (D.L. NO.7/1815/1974)**
- 2. REX STUART ANTONY,
NO.4 C/22, PARRIE NAGAR,
OLD SUNGAM BYE-PASS,
RAMANATHAPURAM,
COIMBATORE - 641 045(OWNER.)**
- 3. BAJAJ ALLIANZ GENERAL INSURANCE COMPLANY LTD.,
FINANCE TOWER, 3RD FLOOR, KOCHI-17.
POLICE ISSUING OFFICE,
DOOR NO. 11(OFFICE NO.6A), PEOPLES PARK 3RD FLOOR,
GOVT. ARTS COLLEGE ROAD, COIMBATORE - 641 018.**

**R1 & R2 BY ADV. SRI.LEGY ABRAHAM
R3 BY ADVS. SRI.GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI, SC
SMT.LATHA SUSAN CHERIAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

M.A.C.A.No.2089 of 2014

Dated this the 9th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is the appellant herein. It is a case where he has suffered serious injuries in an accident as a consequence of which he has become totally paralytic.

2. We heard the learned counsel on both sides.

3. The accident occurred on 27.03.2011. He was driving an autorickshaw bearing registration No.KL-07-BN-7195 along Varapuzha-Cheranalloor N.H.17 with two passengers. At 11.15 a.m. when he reached near Muttar-Kunumpuram Junction, a motorcar bearing registration No.TN/66A-6411 which was coming from the opposite direction while overtaking another vehicle, hit the front side of the autorickshaw. It caused the autorickshaw to turn turtle and the appellant as well as the other passengers sustained severe injuries. He was taken to AIMS, Ernakulam and admitted in ICU and treated there. The appellant was aged 43 years at the time of the accident. It was claimed

that his monthly income was ₹12,000/-. Before the Tribunal below, detailed evidence was adduced by producing Exts.A1 to A17 and the claimant's wife was examined as PW1. Ext.C1 is the disability certificate issued by the Medical Board attached to the Medical College Hospital, Alappuzha, which will shows that he has sustained 90% disability.

4. The learned counsel for the appellant submitted by referring to the various documents that the appellant has become paralytic below hip. He is unable to sit himself in the bed and he is confined to the bed. It is submitted that he requires the help of two others even to lift himself and to meet his daily needs. It is submitted that under this situation, the Tribunal should have assessed the disability at 100%. Presently it is assessed at 90%. It is also submitted that the compensation awarded towards various heads also requires modification. As against the total claim of ₹40,00,000/-, the Tribunal has granted ₹16,85,800/.

5. The discharge summary, Ext.A4 proves that he had sustained various injuries to his leg and spinal cord, which resulted in UMN bladder, constipation, high paraplegia, autonomic dysreflexia and neuropathic pain. He

was admitted on 27.03.2011 in the hospital and discharged on 30.05.2011. It shows that he was in the hospital for more than two months. It also shows that he has sustained injuries to his nerves and he was suffering from paralysis of the right upper limb and his total sensory loss below T4. Ext.A11 certificate issued by Dr.Surendran, AIMS, Ernakulam, shows that he had sustained fracture C7 Vertebra with grade 1 Listhesis C7 over T1, fracture shaft femur right an open dislocation of 1st and 2nd MTP Joints left. In addition to that he had sustained ASIA-A spinal cord injury resulting in high paraplegia with UMN bladder and constipation.

6. In the disability certificate Ext.C1, it was noted that there is a total loss of mobility and stability component of both lower limbs. This will show evidently that he is leading a vegetate life now.

7. The Tribunal has granted compensation under various heads as already noticed. For non-production of the registration book, the Tribunal did not accept the case that he was the owner of autorickshaw. The learned counsel for the appellant submitted that before the Tribunal a copy of

the driving license was produced as Ext.A6. Before this Court, the details showing the ownership of the vehicle have been produced as Annexure A1 along with I.A.No.1066/2015. It will show that against the owner's name, the appellant's name is there. He is the owner from 21.06.2010 of the vehicle having registration No.KL-07-BN-7195.

8. Now we will come to the specific items of claims. Even though the learned counsel for the appellant submitted that the Tribunal omitted to grant an amount more than ₹9,500/- covering the medical bills, we find that the total amount was quantified by the Tribunal as ₹4,69,531.45 covered by Ext.A9 series of medical bills and it was held that the bills contained items for ambulance and for sales return from the hospital. The same alone have been excluded and therefore, we are not interfering with the questions awarded for medical expenses.

9. The major argument is regarding the non acceptance of the entire monthly income claimed by the appellant. The Tribunal has adopted ₹4,000/- as notional monthly income. The accident occurred in the year 2011.

The amount arrived at as monthly income of ₹4,000/- accordingly is, is too low. He is a licensed driver and he was the owner of autorickshaw also which stands proved by Annexure A1. Therefore the method by which a proper income, even though the exact documentary evidence is not there, is to be found out. Going by the decision of the Apex Court in **Minu Rout & another v. Satya Prabyumna Mohapatra & others** [2013 (10) SCC 695] as regards a licenced driver's monthly remuneration, the Apex Court has fixed it as ₹6,000/- in an accident which occurred in the year 2004. Herein apart from being the driver, he was the owner of the autorickshaw.

10. The learned senior counsel for the insurance company submitted that the ownership's details were not produced before the Tribunal. But now as Annexure A1 has been produced herein and the accident itself had occurred while he was driving the autorickshaw which was never disputed, we fully agree with the learned counsel for the appellant that his ownership over the vehicle stands established. Therefore, we arrive at a reasonable amount of ₹10,000/- as monthly income of the appellant for fixing the

compensation.(On an average it will be below ₹350/- if reckoned per day.)

11. The learned counsel for the appellant seeks for a modification of the amounts claimed towards pain and sufferings. It is submitted that ₹5,00,000/- was claimed towards pain and sufferings and the Tribunal has granted only a sum of ₹1,00,000/-. It is seen that the appellant had sustained injuries of serious nature, including to the spinal cord and the pain and suffering is a continuing one since he is leading a vegetate life. We consider it proper to fix a sum of ₹2,00,000/- towards pain and sufferings.

12. One of the items of heads which according to the learned counsel requires modification is in the amount awarded towards future treatment. A sum of ₹1,00,000/- has been granted out of the amount claimed at ₹3,00,000/-. Before this Court, the appellant has produced along with I.A.No.1066 of 2015 series of medical bills, which shows a total amount nearly ₹70,000/-.

13. We have gone through the treatment certificates Annexures A3 to A8 produced along with I.A.No.1066/2015 before this Court. We find from the treatment certificates

produced that various treatments were undergone by him for different periods. The first among the certificate is dated 06.02.2014 and the last of the same dated 27.12.2014. From the details of provided in the certificates, various treatments have been offered for certain physical complaints also, which are referred to as breathlessness, abdominal discomforts, dysphagia in Annexure A5. The learned counsel for the appellant submitted that those problems have arisen due to the fact that he is completely confined to the bed. What is important to find out is whether, it has occasioned as a direct cause of the injuries sustained in the accident and a consequence of the same alone, even though the certificates give a report of the treatment undertaken by him. There may be different complaints which may occur either due to the condition of the patient or due to other general complaints. But the medical evidence should prove definitely that the complaints are mainly related to the paralytic position of the injured. But even after perusing the certificates it is seen that the doctors have not given a specific opinion regarding that. Therefore as rightly pointed out by the learned senior

counsel for the insurance company, this Court will not be justified in drawing a conclusion based on Annexures A3 to A5.

14. But at the same time, it is pointed out by the learned counsel for the appellant that proper amounts should have been provided for future treatment. The fact remains that he will require treatment to improve his physical conditions and physical complaints related to other disabilities and he is laid up can be expected also. An amount of ₹1,00,000/- has already been provided by the Tribunal towards future treatment. We find it proper to raise it to an amount of ₹2,00,000/-.

15. One of the important items of compensation which the appellant is entitled is towards loss of expectation of life and loss of amenities and enjoyment in life. The Tribunal has granted a sum of ₹1,00,000/- which was specifically claimed. The learned counsel for the appellant submitted that going by the decisions of the apex court in **Nagappa v. Gurudayal Singh [2003(1) KLT 155]** and **Rajesh v. Rajbir Singh [2013(3) KLT 89]**, the Tribunal and this Court will have to fix just and fair compensation. In

this case the total amount claimed is ₹40,00,000/-. According to us, towards loss of amenities and enjoyment in life the claimant is entitled for more amount. He was aged 43 years at the time of accident. Now he is unable to move, he is unable to lift himself in bed and normally he will not be able to survive without assistance of others and he is unable to do any work and he has lost all pleasures of life which are factors relevant to award proper compensation under this head. Therefore, the same will stand enhanced to ₹2,00,000/-. The compensation, in total, is refixed as shown below in a chart:-

Sl. No.	Heads	Amount claimed	Awarded by Tribunal in Rs.	Amount refixed
1	Loss of earnings	50,000/-	50,000/-	1,20,000/- (10,000x12 months)
2	Partial loss of earnings	0	0	0
3	Transport to Hospital and back to home	20,000/-	20,000/-	20,000/-
4	Extra nourishment	1,00,000/-	1,00,000/-	1,00,000/-
5	Damages to clothes and articles	2500	500	500
6	Attendant expenses	50,000/-	50,000/-	50,000/-
7	Medical expenses	5,00,000/-	4,60,500/-	4,60,500/-
8	Compensation for pain and sufferings	5,00,000/-	1,00,000/-	1,00,000/-
9	Compensation for disfiguration	0	0	16,80,000/- (10,000x12x14)

Sl. No.	Heads	Amount claimed	Awarded by Tribunal in Rs.	Amount refixed
10	Compensation for continuing and permanent/partial disability	25,00,000/- -	6,04,800/-	2,00,000/-
11	Compensation for future treatments	3,00,000/-	1,00,000/-	1,00,000/-
12	Future expenses for nursing care, bystander expenses etc.	3,00,000/-	1,00,000/-	2,00,000/-
13	Compensation for loss of expectation of life/amenities and enjoyment in life	1,00,000/-	1,00,000/-	1,00,000/-
14	Expenses for purchase of catheter, spl.bed etc.	2,00,000/-	1,00,000/-	1,00,000/-
			Total	32,31,000/-

16. Even though the medical certificate, Ext.C1 shows that 90% is the disability, it is a case of total Paraplegia and hence the total functional disability will be 100% and the amount of compensation will come to 10,000x12x14 i.e. ₹16,80,000/-. The compensation for loss of expectation of life and loss of amenities and enjoyment of life is ₹2,00,000/- and compensation for pain and sufferings is ₹2,00,000/-. Therefore the total compensation is granted at a sum of ₹32,31,000/-(Rupees Thirty Two Lakhs Thirty One Thousand only). The Tribunal has granted 9% interest from the date of petition. We provide the same rate of interest for the enhancement granted as above and we direct the insurance company to deposit the amount within a period of

three months. The appellant is permitted to withdraw the amount as above. It is up to the appellant to see that the amounts are kept in a proper manner in a Bank of his choice, so that the required amounts can be drawn from time to time and interest also will be generated.

Accordingly, this appeal is allowed. The parties will suffer their costs in the appeal.

**T.R.RAMACHANDRAN NAIR
JUDGE**

**P.V.ASHA
JUDGE**

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