

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 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

MACA.No. 540 of 2008 ()

**AGAINST THE AWARD IN OP(MV) 2218/2005 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, PERUMBAVOOR DATED 05-09-2007**

APPELLANT/PETITIONER/CLAIMANT

**KUMARAN T.C., SON OF CHATHAN
THOTTAPARAMOLA HOUSE, WEST VENGOLA P.O., PERUMBAVOOR.**

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS/RESPONDENTS:

- 1. CHACKO JOSEPH, KANNADAN HOUSE
ASAMANNUR P.O., ODAKKALI, ERNAKULAM DISTRICT.**
- 2. SHOBY, SON OF JOSEPH, KANNADAN HOUSE
ASAMANNUR P.O., ODAKKALI, ERNAKULAM DISTRICT.**
- 3. M/S. NEW INDIA ASSURANCE COMPANY LIMITED
ST.JOSEPH'S BUILDING, A.M.ROAD, PERUMBAVOOR.**

R3 BY ADV. SRI.N.S.MOHAMMED USMAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A. No.540 of 2008

Dated this the 27th day of May, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal filed by the appellant/petitioner who was a daily labourer at the time of the accident the main emphasis made by the learned counsel for the appellant is, with regard to the inadequacy of the compensation, the adoption of reduced percentage of disability by the Tribunal and as regards the rate of interest adopted viz. at the rate of 7.5% per annum alone. As against the total claim of Rs.3,50,000/- the Tribunal has awarded only Rs.1,60,090/-.

2. It is a case where the accident occurred on 26.9.2005 at 4 p.m. while he was standing near the Ponjassery – Mankuzhi road. He was hit by a mini lorry bearing registration No.KL-7C-2545 and serious injuries have been caused to him. We find from the award that the

following injuries have been caused to him.

1. Crush injury with laceration on the right acrotum.
2. Fracture to pelvis.

3. He was immediately taken to the hospital and was actually treated in three different hospitals viz. San Joe Hospital, Perumbavoor, M.O.S.C. Medical College Hospital, Kolencherry and thereafter in the Medical Trust Hospital, Ernakulam. He was treated as inpatient from 27.9.2005 to 12.10.2005 namely for a period of 16 days. Ext.A6 discharge summary shows that he has got displaced comminuted fracture of root of anterior and posterior column, displaced comminuted fracture of right pubis and adjacent right superior pubic rami with pubic diasthesis and linear displaced fracture of interior pubic rami. The treatment procedures extended to the appellant shows that open reduction and internal fixation with reconstruction places was done under SA on 29.9.2005. The percentage of disability of the appellant, is clear from Ext.A7 disability certificate issued by Orthopaedic Surgeon, Taluk

Headquarters Hospital, Muvattupuzha, Dr.C.C.James, who was examined as PW1. He had assessed the disability as 24% with respect to the whole body.

4. Going by the evidence of PW1 the appellant has got the following difficulties

“Partial ankylosis with limit of flexion and extension and the motion in both hip limited to an arc of 45° flexion to 180° line. Abduction and adduction limited to an arc from 25° to 180°, and rotation is limited to an arc of 50° to 180° line. The petitioner has transverse fracture dislocation of left acetabulum and pelvis injury”.

5. Even though the doctor had not treated the patient he had assessed the disability properly, according to the learned counsel for the appellant. But the learned counsel for the Insurance Company submitted that the finding by the Tribunal that the extent of disability will be only 12% is correct.

6. While limiting the disability to 12%, the reason stated by the Tribunal is that there is possibility to improve after one year of the accident, as the disability certificate was issued within one year of the accident. There is no

finding that the doctor who was examined before the Tribunal had given any opinion in that regard. Hence the reduction of percentage of disability to 12% cannot be justified. But at the same time in the light of the fact that the Court can arrive at the percentage of disability after assessing various aspects including functional disability, we fix the same at 20%.

7. Being a daily labourer, the monthly income was claimed at Rs.4,500/-. What is awarded by the Tribunal is by fixing the monthly income at Rs.2,500/-. The accident is of the year 2005 and we are of the view that the amount claimed at Rs. 4,500/- as monthly income for a daily labourer, going by the wage structure in this State cannot be said to be exorbitant. We are fortified in this view in the light of the decision of the Apex court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [(2011) 13 SCC 236]** wherein it was held that as far as a daily labourer is concerned Rs.4,500/- claimed for an accident of the year 2004 cannot be said to be exorbitant.

We are also of the view that the amount awarded towards pain and suffering and loss of amenities also require appropriate enhancement. Therefore, we refix the compensation in the following manner:

Head of claim	Amount awarded in rupees
Loss of income	18000
Transportation expenses	1500
Attendant's charges	5000
Extra nourishment	2000
Damage to clothings	250
Pain and suffering	35000
Loss of amenities	35000
Treatment expenses	54740
Compensation for disability	162000
Total	3,13,490 (Rupees three lakh thirteen thousand four hundred and ninety only)

The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation. There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three

months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/