

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 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

MACA.No. 2124 of 2014 ()

AGAINST THE AWARD IN OPMV 602/2005 of MACT,PATHANAMTHITTA
DATED 21-03-2014

APPELLANT/PETITIONER IN THE OPMV:

BINU N.K, AGED 38 YEARS
S/O KAMALASANEN, NADUKKEPURAYIL, VALIYAKULAM MURI
CHERUKULANJI P.O, VADASSERIKKARA VILLAGE
PATHANAMTHITTA.

BY ADVS.SRI.T.K.BIJU (MANJINIKARA)
SMT.ANNIE M.ABRAHAM

RESPONDENT(S)/RESPONDENTS IN OP(MV) :

1. SHEREEF,
S/O ABDUL RAHMAN, KADIYIL VEEDU, PATHADY
EROOR VILLAGE, PATHANAPURAM 691312.

2. MUSTAPHA,
S/O MEERA SAHIB, ALEENA NIVAS, LAKSHAM VEEDU COLONY
BABASAHIB NAGAR, PATHANAPURAM VILLAGE 689695.

3. THE BRANCH MANAGER,
NATIONAL INSURANCE COMPANY.
PATHANAMTHITTA BRANCH OFFICE, PATHANAMTHITTA 689647.

4. ABDUL AZIZ,
CHAMAKALA VILAYIL VEEDU, ADIKATTUKULANGARA
ALAPPUZHA DISTRICT - 690504.

R3 BY ADV. SRI.RAJAN P.KALIYATH
R BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 12-03-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A No.2124 of 2014

Dated this the 12th day of March, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 02.08.2004. When he was proceeding in his motor cycle bearing Reg.No.KL-03/H-5594, it was hit by a Pick Up Van autorickshaw. The appellant sustained very serious injuries and was immediately taken to the hospital. After prolonged period of treatment, his disability was assessed as 24% by the Medical Board.

2. The claim petition was filed seeking compensation to the tune of Rs.4,75,000/- which was limited to Rs.2 lakhs. The Tribunal awarded a sum of Rs.2,08,017/-. This appeal is filed seeking enhancement in compensation. We heard the learned counsel appearing on either side.

3. The injuries sustained in the accident are as follows:

“Abrasion on lower lip, right elbow joint, lacerated wound on right forearm, open comminuted fracture

right femur distal 1/3rd.”

4. He underwent treatment for a period of 23 days. He had to continue the treatment for a further period of more than 8 months.

5. The appellant was aged 29 years at the time of the accident. He was working as a mechanic and earning a monthly income of Rs.3,620/- per mensem. The Tribunal fixed his income as Rs.3,000/- notionally. A sum of Rs.18,000/- was awarded towards loss of earnings for the period of six months. But the Tribunal assessed compensation towards permanent disability as compensation for loss of earning capacity reckoning the disability factor only as 15%, even though the Medical Board assessed the disability as 24%. We find that the appellant has incurred the disability on account of total ankylosis of right leg with one inch of shortening of right lower limb. Therefore we do not find any reason for reducing the percentage of disability assessed by the Medical Board in assessing the compensation towards permanent disability. Accordingly we convert the compensation under the head 'loss of earning capacity' to

compensation for 'permanent disability' and refix the same as Rs.1,46,880/- (ie.,Rs.3000X12X24/100X17). The Tribunal has awarded a sum of Rs.4,000/- alone towards bystander expenses. Reckoning Rs.200/- per day, we award a sum of Rs.4,600/- towards bystander's expenses. On account of the injuries sustained in his legs and the treatment undergone, the appellant would have experienced very severe pain, discomfort and inconvenience. Therefore, we enhance the amount towards pain and sufferings to Rs.35,000/-. As the appellant's movements are seriously affected on account of the shortening of his leg, ankylosis, etc. it will not be possible for him to enjoy the normal amenities of life as he was availing before the accident. Therefore, we award an amount of Rs.35,000/- towards loss of amenities. The disability certificate shows that the appellant has incurred disfigurement also by way of shortening of leg etc. which would have seriously affected his marriage prospects. Therefore we award Rs.35,000/- towards disfigurement as well as loss of marriage prospects. Therefore the award passed by the Tribunal is modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded by the Tribunal</i>	<i>Amt.awarded by this Court</i>
1	Loss of earnings	Rs. 18,000.00	Rs. 18,000.00
2	Transport to hospital	Rs. 5,000.00	Rs. 5,000.00
3	Extra nourishment	Rs. 5,000.00	Rs. 5,000.00
4	Damage to clothing	Rs. 250.00	Rs. 250.00
5	Medical expenses	Rs. 33,967.00	Rs. 33,967.00
6	Bystander's expenses	Rs. 4,000.00	Rs. 4,600.00
7	Pain and sufferings	Rs. 25,000.00	Rs. 35,000.00
8	Permanent disability	Rs. 91,800.00	Rs.1,46,880.00
9	Loss of amenities & enjoyment of life	Rs. 25,000.00	Rs. 35,000.00
10	Compensation for disfigurement and loss of marriage prospects		Rs. 35,000.00
	TOTAL	Rs.2,08,017.00	Rs.3,18,697.00 round off to Rs.3,18,700.00

(Rupees Three lakhs eighteen thousand seven hundred only)

Thus, the appellant will be entitled to a total compensation of Rs.3,18,700/- (Rupees Three lakhs eighteen thousand and seven hundred only) and the enhanced amount will carry interest at the rate of 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of

receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimant can withdraw the amount.

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

Sd/-

T.R.RAMACHANDRAN NAIR

Judge

Sd/-

P.VASHA

Judge

rtr/

/true copy/

P.S to Judge