

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 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

MACA.No. 616 of 2008 ()

AGAINST THE AWARD IN OPMV 3061/2001 of MACT,THRISSUR DATED
10-05-2007

APPELLANT/PETITIONER::

ASWATHI RAVEENDRAN, D/O RAVEENDRAN
CHITTATHUPARAMBIL HOUSE, MUTHUVARA P.O., AMALA NAGAR
THRISSUR DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS::

1. T.B.SUDHAKARAN , S/O BALAN
THADATHIL HOUSE, CHITILAPPILLY, P.O.PURANATTUKARA
THRISSUR DISTRICT.

2. THE ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, 3RD FLOOR, MAHESWARI BUILDING
M.G. ROAD, THRISSUR.

R2 BY ADV.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.616 OF 2008

Dated this the 5th day of March, 2015

JUDGMENT

Asha, J.

The appellant met with an accident on 9.7.2001 when the auto rickshaw in which she was travelling lost control and hit against the compound wall. She sustained very severe injuries and was taken to Amala Hospital, Thrissur and thereafter to West Fort Hospital, Thrissur. She underwent treatment for a very long period and incurred disability which was assessed as 30% whole body.

2. The claim petition was filed seeking compensation to the tune of ₹5,46,500/-. The Tribunal awarded a sum of ₹2,27,600/-. This appeal is filed seeking enhancement of compensation.

3. The appellant met with the accident at the age of 12 years while she was studying in the school. She sustained severe crush injury to left leg with muscle loss and tendon injury, compound comminuted fracture of both bones of left leg with bone loss, avulsion of skin with

vascularity in distal part of leg etc. She underwent inpatient treatment at Amala Hospital on 9.7.2001 and discharged on 20.8.2001. Thereafter she was admitted in West Fort Hospital, Thrissur on 15.10.2001 and was discharged on 19.10.2001. Again she was admitted on 19.04.2002 and was discharged on 20.4.2002. On account of the fracture and other injuries sustained, she was unable to pursue her studies for a period of seven months. Her left leg got shortened and she had to use crutches for walking. She had shortening of left leg by 5 cm. and there was total ankylosis of left ankle and toes. Thus 30% permanent disability was found.

4. The learned counsel for the appellant submits that the amount of compensation awarded by the Tribunal under various heads are thoroughly insufficient. It is pointed out that the appellant was a bright student and was unable to pursue her studies for a very long time and the Tribunal did not grant any amount towards loss of amenities. It is also pointed out that the notional income reckoned in her case is very low.

5. On the other hand, the learned counsel appearing for the Insurance company opposed the claim for enhancement. We are of the view that the notional income of the appellant can be taken @ ₹2,000/- per month in the place of ₹1,250/- adopted by the Tribunal. Therefore reckoning the disability at 30%, a sum of ₹108000/- (2000 x 12 x 15 x 30%) will be admissible towards compensation under the head of permanent disability.

6. The Tribunal has awarded a sum of ₹1000/- alone towards transportation. It is seen that the appellant had to undertake several visits to the hospital. We therefore enhance the compensation under this head to ₹2500/-. The appellant was under inpatient treatment for a period of 56 days. The Tribunal awarded a sum of ₹5000/- alone towards expenses for bystander . We award a sum of ₹11,200/- towards bystander's expenses @ ₹200/- per day for 56 days. Under the head of pain and suffering, the Tribunal has awarded a sum of ₹20,000/-. On account of the injuries on her legs, she had to undergo various procedures of treatment including surgery. She was unable to

attend her school atleast for a period of seven months. Having regard to the nature of injuries, discomfort and inconvenience she would have experienced during the period of treatment, we award a sum of ₹50,000/- towards pain and suffering. At the age 12 years, she had to experience pain and suffering on account of the injuries and she was unable to enjoy the childhood as well as other amenities of life along with other children. Therefore, we award a sum of ₹ 1,00,000/- towards loss of amenities and enjoyment of life. On account of the disfiguration due to shortening of her leg, the appellant incurred permanent disability, which she has to suffer life long. We therefore award a sum of ₹.40,000/- towards disfiguration and ₹1,00,000/- towards loss of marriage prospects.

7. Thus the appellant will be entitled to compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Expenses for transportation	2500
Damage to clothing and articles	500

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Expenses for treatment	128600
Expense for bystander	11200
Expense for future treatment	5000
Pain and suffering	50000
Permanent disability	108000
Loss of amenities and enjoyment of life	100000
Loss of marriage prospects	100000
Disfiguration	40000
Total	545800 (Rupees five lakhs forty five thousand eight hundred only)

8. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited 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

sv.

P.VASHA, JUDGE