

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 FEBRUARY 2015/16TH MAGHA, 1936

MACA.No. 1595 of 2010 ()

AGAINST THE AWARD IN OPMV 1064/2002 ON THE FILES OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA DATED 10-04-2008

APPELLANT/PETITIONER.:

RAVI, S/O.PADMANABHAN,
RAVI SADANAM, PULINCUNNU, ALAPPUZHA.

BY ADV. SRI.GEORGE MATHEW

RESPONDENTS/RESPONDENTS.:

1. G.RENJITH DAS, S/O.N.GURUDAS,
THADATARAKUTHU PUTHENVEEDU, JAWAR COLONY, TRIVANDRUM
PIN - 695 041.

2. B.SURESH, S/O. N.BHANU,
VAYALIMPARAMPIL HOUSE, CHARUMOODU P.O., MAVELIKKARA
PIN - 690 505.

3. THE UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE, SARADA COMPLEX, MULLACKAL
ALAPPUZHA, PIN - 688 001.

R,R1 BY ADV. SRI.T.A.UNNIKRISHNAN

R,R1 BY ADV. SRI.K.SATHEESH KUMAR

R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.1595 of 2010

Dated this the 5th day of February 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor vehicle accident which occurred on 6.2.2002 at about 2 a.m. While he was travelling in a jeep bearing Registration No. KL 4/H-7280, it overturned and he sustained very serious injuries. He was immediately taken to the Medical College Hospital, Alappuzha. Then he was referred to Medical Trust Hospital, Ernakulam and was admitted there. He underwent treatment there as inpatient from 6.2.2002 to 27.3.2002. During this period, he underwent surgeries and various courses of treatment.

2. The claim petition was filed seeking compensation to the tune of Rs. 6 lakhs. But the Tribunal awarded only a sum of Rs. 3,35,000/-. This appeal is filed seeking enhancement of compensation pointing out that quantum awarded under various heads are insufficient.

3. We heard the learned counsel appearing for the Insurance Company also who opposed the claim for enhancement of compensation.

4. It was claimed that the appellant was working as a carpenter engaged in boat building earning a sum of Rs. 6,000/- per month. Before the Tribunal oral evidence was adduced examining PW1 and PW2 and documentary evidence by Exts.A1 to A21 series. As per Ext.A4, the injury sustained by the appellant are as follows:

"Head injury with C2,C3 subluxation with C2 Lamina fractured, disoriented restlem, bleeding from mouth, surgical emphysema right side of chest, abrasion lateral to right hip, biparietal contusion, fracture right 8th rib, lung contusion, diffuse cerebral Oedema, subdural heamatomas, contusion in both frontoparietal and left temporal region".

5. In Ext.A8, treatment undergone by him has been explained. On 16.2.2002, he underwent bilateral frontal burrhole evacuation of subdural Hygoma under general anesthesia. He was put on Halter traction, this did not correct subluxation for which MRI cervical spine was taken and he was advised to undergo surgical correction. At this stage, the appellant was discharged on 27.3.2002. Ext.A9 certificate issued by the Psychologist, Medical Trust Hospital, Ernakulam shows

that the working memory of the appellant was moderately impaired, his verbal and visual learning functioning were mildly impaired and his visuo spatial planning were mildly impaired. In Ext.A9 disability certificate, it was stated that there was moderate severe impairment present in the lobe functioning of the appellant. Ext A12 to A18 certificates issued by various medical officers of various hospitals show that appellant had to continue the treatment and he was unable to attend to any work. Appellant's wife who was examined as PW1 also deposed as to his income out of the carpentry work he was doing before the accident and as to his plight consequent to the injuries including the psychiatric problems, visual impairment, etc. Appellant's employer -the Proprietor of the Boat building yard was examined as PW2 to prove his income. Appellant had produced Ext A17 certificate before the Tribunal, issued from the Medical College Hospital, Kottayam on 6.10.2007, in which his disability was certified as 20%. In that certificate it was also certified that the appellant was having delayed memory re-call, occasional poor comprehension, emotional disturbances and concentric contraction of visual field bilateral. The Tribunal fixed

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his disability as 15% and assessed the compensation. The appellant had to undergo treatment regularly even during the pendency of the claim petition as well as of this appeal.

6. When the appeal came up for hearing, this Court had by order dated 15.11.2013 in I.A. 342/2013, directed that the appellant should be subjected to an examination by a Medical Board, to be constituted including a Neurologist. The Superintendent of the Medical College Hospital, Thiruvananthapuram, as per his letter NO. G2.12456/2013/MCH dated 7.1.2014, forwarded the medial certificate dated 3.1.2014 to this court. The certificate reads as follows.

“ Disability Certificate

No G2/12456/2013/MCH/TVM

Dated 03/01/2014

Special Medical Board constituted as per the direction of Hon'ble High Court of Kerala, Ernakulam. MACA No. 1595/10

We, the members of the Medical Board. Medical College Hospital, Thiruvananthapuram have examined Sri. Ravi, aged 42 years, S/o Padmanabhan, residing at Ravisadanam, Pulinkunnam, Alappuzha (Dist) on 02/12/2013 and subsequently as inpatient from 04/12/2013 to 16/12/2013, found him as a person with disability by reason of psychiatric impairment due to:

“1. F.06.32 Organic Depressive Disorder current episode severe without psychotic symptoms.

2. F.07.2 Postconcussional syndrome.

(Excessive sadness (depression) and cognitive impairment due to head injury leading to destruction of various areas of brain mainly both sides of front of brain and left side (temporal) which controls emotions and intellectual functions.)

Identification Marks

1. Healed scar 3 cm long, over right eyebrow
2. Black mole above iliac- crest about 10 cm from midline

The following consultants in different specialities were included in the Medical Board and they have examined the patient to assess the disability and it has been found that the disability is permanent in nature. The degree of disabilities have been found as 60% (sixty percentage)“

7. It can be seen that the appellant continued treatment even after discharge from the Medical Trust hospital on account of the injuries and degree of disability has been certified as 60%. It has been stated that due to the head injury, various areas of brain on both sides of front brain and left side which controls emotions and intellectual functions have been destructed. It is clear that the appellant who was aged 32 at the time of accident, has been totally incapacitated to undertake any work and he has incurred 100% functional disability, apart from the inconveniences and discomforts due to the disabilities

incurred.

8. The Tribunal has awarded a sum of Rs. 12,000/- towards loss of earnings reckoning his income as Rs. 2,000/- for a period of six months. Having regard to the wage structure prevailing in the State in respect of carpenters especially those engaged in boat building, which needs special skill and expertise, we fix the monthly income of the appellant at the rate of Rs. 5,000/- per month.

9. In the light of the medical certificate issued by the Medical Board on 3.1.2014, we find that appellant has incurred 100% functional disability and therefore we reckon his disability as 100%. Similarly, we also find that the amount awarded under various heads like pain and suffering, loss of amenities, bystander expenses, the cost of medicines, treatment charges, etc, awarded by the Tribunal are thoroughly inadequate. We therefore, enhance the same.

10. Towards loss of earnings, the appellant will be entitled to a sum of Rs. 30,000/- reckoning his income as Rs. 5,000/- for a period of six months. The Tribunal has already noticed the Exts.A9 & A20 series of the bills pertaining to purchase of

medicines and treatment charges of the appellant for a sum of Rs. 2,07,902/-. But the Tribunal awarded only a sum of Rs. Two lakhs, excluding the amount covered by the bills produced Ext.A20 series for a sum of Rs. 46,910/- towards charges for Ayurvedic treatment. We find that the appellant resorted to Ayurvedic treatment soon after the discharge from the hospital. We enhance the compensation towards medical expenses by a sum of Rs. 50,000/-. Towards bystander expenses, Rs. 4,500/- alone has been granted. The appellant was under in-patient treatment in Medical Trust Hospital itself for a period of 50 days Reckoning Rs.150/- per day, we enhance the bystander expenses to Rs. 7500/-.

12. The Tribunal has awarded a sum of Rs. 15,000/- towards pain and suffering. The appellant was aged 32 years at the time of the accident. The injury sustained by him and the disability incurred are explained in various documents. Having regard to the nature of injuries, ongoing treatment, the discomfort and inconvenience being experienced by the appellant ever since the date of accident, we find it just to award a sum of Rs. 1 lakh towards pain and suffering. Similarly, he has

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permanently lost all the enjoyments in life, at the early age of 32, which cannot be recouped in terms of money. Therefore, we award an amount of Rs. 1 lakh towards loss of amenities in life. The Tribunal awarded a sum of Rs. 61,200/- towards compensation for permanent disability and loss of earning power, reckoning the disability as 15% and Rs. 2000/- was taken as his monthly income. Reckoning his disability as 100%, the monthly income as Rs.5,000/- and adopting the multiplier as 16, the appellant will be entitled to a sum of Rs. 9,60,000/- towards permanent disability. Accordingly, we modify the award as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded (in Rs)</i>	<i>Amount modified (in Rs.)</i>
1	Compensation for loss of earning	12000	30000
2	Cost of medicine and treatment charges	200000	250000
3	Transportation charges	35000	35000
4	Bystander expenses	4500/-	7500
5	Extra nourishment	2000	2000
6	Damage to clothing and articles	300	300
7	Compensation for pain and suffering	15000	100000
8	Compensation for loss of earning power	61200	960000
9	Compensation for loss of amenities	5000	100000
	Total	335000	14,84,800

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Thus the appellant will be entitled to a total compensation of Rs. 14,84,800/-. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition, in the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513]. The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge