

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. 1597 of 2010 ()

AGAINST THE AWARD IN OPMV 1363/2003 of M.A.C.T., THALASSERY DATED 22-
01-2010

APPELLANT(S):PETITIONER

RATHEESH BABU.P.V.
S/O.PADINHARE VEETIL, KARAMEL P.O ANNUR
VIA PAYYANNUR, KANNUAR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S):THIRD RESPONDENT

NATIONAL INSURANCE CO. LTD.,
PERUMBA, PAYYANNUR.

R1 BY ADV. SMT.SARAH SALVY

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

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

M.A.C.A.No.1597 of 2010

Dated this the 27th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant whose leg was amputated, mainly aggrieved by the inadequacy of compensation. As against his claim of Rs.10 Lakhs, the Tribunal awarded an amount of Rs.5,02,000/-.

2. Going by the age of the appellant, he had completed 30 years of age at the time of accident which occurred on 7.3.2003. He was riding a motor bike having registration No.KL-13E-1218. He was knocked down by a bus bearing Reg. No.KL-13F-2889. He suffered various bodily injuries. Ext.A2 wound certificate issued from B.K.M. Hospital, Payyannur shows that he had sustained crush injury involving right and left of both tibia and fibula. He was later treated in the Unity Health Complex, Mangalore which is proved by Ext.A3

certificate. Initially he was treated for a period of 14 days from 7.7.2003 to to 21.3.2003. The amputation of right leg is recorded in Ext.A4. He was again treated in Highland Hospital, Mangalore for the period from 21.3.2003 to 3.5.2003 which is proved by Ext.A5 certificate. The percentage of disability is supported by Ext.X1 which is issued by the Medical Board of Pariyaram Medical College. Going by the same, the percentage of disability to the limb is 85 and whole body is 30%.

3. The arguments are mainly concentrated on the following aspects: It is submitted that the percentage of disability should have been reckoned as 85 instead of 30. We heard learned counsel for the insurance company on this aspect who submitted that 30% is the whole body disability which alone can be reckoned for the purpose of awarding compensation. We are of the view that the said argument is justified. 85% being only to the limb, and 30% is the whole body disability, the same alone can be reckoned.

4. The next aspect is regarding the monthly income of the injured. It was his case that he was working as a Resident Engineer in Vayalil

Industries, Bangalore and was earning a sum of Rs.4,500/- per month. It is supported by Ext.A9 salary certificate. To prove his qualification, Ext.A10 National Trade Certificate issued by the Ministry of Labour, Government of India has been produced. The appellant had acquired the Trade Test in the trade of Mechanic Radio and Television held in the year 1991. Only on the ground that his deposition regarding the employer is not fully reliable, the monthly income has been fixed at Rs.4,000/-. According to us, since he is a qualified person having National Trade Certificate, the only thing to be considered is whether the monthly income claimed is exorbitant. It cannot be said that Rs.4,500/- as monthly salary for a job in the year 2003 is excessive. Therefore, we fully agree with the learned counsel for the appellant that the monthly income could have been reckoned as Rs.4,500/- instead of Rs.4,000/-.

5. It is clear that artificial limb was fitted for the purpose of his movement. Of course, no direct evidence has been adduced to prove the value and the interval during which he will have to change the same. But it is well-known that when artificial limb is being used, it

will have to be changed during definite intervals and one that suits the party concerned and which results in less discomfort to him alone can be applied. On a reasonable interval of five years, it will have to be changed also which is a matter of common knowledge. Therefore, we will have to provide a definite amount for future treatment.

6. As far as bystander's expenses are concerned, it is seen granted at the rate of Rs.100/- per day which we enhance to Rs.200/- per day. We also are of the view that for transport to hospital, Rs.4,000/- alone was granted which will be inadequate, since he was treated in Mangalore in two different hospitals and we provide an amount of Rs.10,000/- under the said head.

7. Learned counsel for the appellant then argued that loss of earnings should be reckoned for a period of two years which is opposed by the learned counsel for the insurance company. What is awarded by the Tribunal is for a period of 9 months. The inpatient treatment is for a period of 58 days and there is no definite evidence to prove that he was prevented from having his avocation for a period of two years. But at the rate of Rs.4,500/- for a period of 9 months, it will be Rs.40,500/-

and we grant the said amount instead of Rs.36,000/- granted by the Tribunal. We also are of the view that for pain and suffering and for loss of amenities, suitable enhancement of the amount awarded is required. As far as pain and suffering is concerned, it is evident that the appellant had suffered serious injuries resulting in amputation. Therefore, we fix an amount of Rs.50,000/- for pain and suffering. As far as loss of amenities is concerned, evidently this is a case of amputation of right leg which will definitely restrict his movements and will deny him all pleasures of life. He cannot walk freely. He was only aged 30 years at the time of accident. In that view of the matter, we fix an amount of Rs.75,000/- for loss of amenities and enjoyment in life, shortened expectation and for denial of pleasures of life. For future medical expenses including cost of artificial limb which may have to be changed periodically, we provide an amount of Rs.30,000/-.

Accordingly, the total compensation is recomputed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Bystander's expenses	5800	11600

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Medical expenses	141400	141400
Disability income	244800	275400
Pain and suffering	25000	50000
Extra nourishment & review	20000	20000
Transport to hospital	4000	10000
Loss of earnings for 9 months	36000	40500
Loss of amenities	25000	75000
Future treatment including cost of artificial limb		30000
Total		653900

(Rupees Six lakhs fifty-three thousand and nine hundred only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition. The insurance company is directed to deposit the entire amount of compensation, less the amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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