

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

MACA.No. 710 of 2008 ()

(AGAINST THE AWARD IN OPMV 2308/2000 of M.A.C.T.,ERNAKULAM DATED 01-06-2007)

APPELLANT(S)/PETITIONER:

NAJEER, S/O.ISMAIL, AGED 23 YEARS,
THAIPARAMBIL HOUSE, 15/1240, STATUE JUNCTION,
THOPPUMPADY.

BY ADVS.SRI.P.M.JOSHI
SMT.JINU JOHN
SRI.JOJO VARGHESE

RESPONDENT(S)/RESPONDENTS:

1. JOSEPH, THAIKOOTTATHU HOUSE, 14/1287 A,
CHULLICKAL P.O. RAMESWARAM VILLAGE.(DELETED)

2. ANTONY KUTTI PURATHU,
DOOR NO.14/426, CHULLICKAL, KOCHI - 2.(DELETED)

(RESPONDENT NOS. 1 AND 2 ARE DELETED FROM THE PARTY ARAY AT
THE RISK OF APPELLANT VIDE ORDER DATED 26/3/2013 IN MACA 710/2008)

3. M/S.ORIENTAL INSURANCE COMPANY LIMITED,
SHAN COMPLEX, 6/990 B BAZAR ROAD, MATTANCHERRY.

4. M/S.ORIENTAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE-1, JOS JUNCTION, M.G.ROAD
ERNAKULAM.

R,R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

MACA. No. 710 OF 2008

Dated this the 24th day of February, 2015

JUDGMENT

Asha,J.

The appellant met with an accident on 30/3/2000. While pillion riding a motor cycle, he was hit by another motor cycle. The appellant sustained very serious injuries and was immediately taken to the hospital. The claim petition was filed seeking compensation of Rs.1,50,000/-. The Tribunal awarded Rs.42,000/-.

2. The learned counsel for the appellant submitted that compensation awarded by the Tribunal under the various heads are inadequate and requires enhancement. We heard the learned Counsel for the Insurance Company also, who opposed the claim for enhancement.

3. It is pointed out that the Tribunal did not award any amount towards permanent disability despite the fact that disability was assessed as 15%. In the accident, the appellant sustained fracture both bones (R) leg, fracture lower 1/3rd radius and dislocation of radio ulnar joint and multiple abrasions on (L) finger and (L) shoulder. Immediately after the accident he was admitted in the Gautham Hospital, Kochi and thereafter he underwent inpatient treatment for a period of ten days in the Medical College Hospital, Thrissur, where open reduction and internal fixation of fracture radius and conservative treatment for refracture of the (R) tibia were done.

4. It was found that the appellant was earning Rs. 2000/- per month on being engaged in a Shipping Harbour. He was aged 23 years at the time of the accident. It is seen that the appellant incurred 15% disability. From Ext.A7, it is seen that he incurred shortening of right lower limb - 3 cms., right knee flexion, dorsiflexion of R) ankle terminally restricted, plantar flexion is terminally restricted in (R) ankle, supination and pronation terminally restricted (L) foreara and wrist flexion and

extension terminally restricted (L). The Tribunal did not rely on Ext.A7 on the ground that the issuing authority of Ext.A7 was not examined. But on examination of Ext.A7, we are of the opinion that the appellant should have been granted compensation towards permanent disability which is assessed as 15%. Reckoning the monthly income at the rate of Rs.2,000/- and adopting 18 as multiplier, compensation under the head of permanent disability is therefore fixed as **Rs. 64,800/-** ($2000 \times 12 \times 18 \times 15 / 100 = \text{Rs.} 64,800/-$).

5. It is seen that the Tribunal has awarded only a sum of Rs.4,000/- towards loss of earnings. Going by the nature of injuries and period of treatment undergone, we are of the view that the appellant would not have been in a position to undertake any work for a period of 3 months. Therefore we award a sum of **Rs. 6000/-** towards loss of earnings. Towards extra nourishment we award **Rs.2,000/-** and we award sum of **Rs.1650/-** towards bystander's expenses at the rate of Rs.150/- per day for 11 days. We award **Rs.2,000/-** towards transportation charges. The Tribunal has awarded Rs.3,000/- towards medical expenses.

6. Having regard to the very serious nature of the injuries and procedure of the treatment undergone and inconvenience suffered by the appellant, we award a sum of **Rs.25,000/-** towards pain and sufferings.

7. Similarly, on account of the disabilities incurred including shortening of the limb, the appellant will not be in a position to enjoy the normal amenities of life for the rest of his life, as he was enjoying before the accident. We, therefore, award **Rs.25,000/-** towards loss of enjoyment of life and loss of amenities.

8. The appellant was aged only 23 years at the time of the accident and was not married. The disfiguration affects his marriage prospects. Therefore, we award **Rs.25,000/-** towards loss of prospects of marriage.

9. In the result, the impugned award of the Tribunal is modified, details of which are given below.:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Amount awarded in this Court (in Rupees).</i>
1	Transportation, hospitalization, attendant expenses, extra nourishment & damage to clothings.	3,000/-	
	a)Extra nourishment		2,000/-
	b)Bystander's expenses		1,650/-(150 x11)
	c)Transportation charges		2000/-
2	Pain & sufferings	20,000/-	25,000/-
4	Loss of earnings	4,000/-	6,000/-
5	Medical expenses	3,000/-	3,000/-
6	Permanent disability		64,800/-
7	Loss of amenities & enjoyment in life	12000	25,000/-
8	Loss of prospects of marriage		25,000/-
	Total		1,54,450/-

10. Thus, the appellant is entitled for total compensation of Rs.1,54,450/-. (Rupees One Lakh Fifty Four Thousand Four Hundred and Fifty only). Enhanced amount of compensation shall carry interest at the rate of 9% p.a. from the date of the petition. The Insurance Company is directed to deposit the enhanced amount of compensation within three months.

The appeal is accordingly allowed. Parties will suffer their respective costs.

Sd/-
T.R.RAMACHANDRAN NAIR,
Judge.

Sd/-
P.V.ASHA,
Judge.

dpk

/True copy/ PS to Judge.