

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

MACA.No. 713 of 2008 ()

AGAINST THE AWARD IN OPMV 2404/1997 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED 11-02-2005

APPELLANT/PETITIONER:

MOHAMMED FAIZAL,
AGED 31 YEARS, S/O IBRAHIM, PATHIYASSERI HOUSE
MENON BAZAR P.O., AZHEEKODE, KODUNGALLUR.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS/RESPONDENTS:

1. P.M.SHIHABUDEEN, S/O MOHAMMED,
13/587, KOCHANGADI, COCHIN-5.

2. THE ORIENTAL INSURANCE CO.LTD.,
REP. BY ITS REGL. MANAGER, REGL. OFFICE
MUTHOOT TOWERS, M.G.ROAD, COCHIN-33.

3. ADDL.R3
EDAMUTTATH RAFFI, AMSON, KODUNGALLUR.

R,R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R,R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.713 of 2008

Dated this the 4th day of March 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor vehicle accident which occurred on 21.5.1996, while he was travelling in a mini lorry bearing registration No. KI-7/G 6117 which hit against an electric post and over turned. He sustained serious injuries and was taken to Taluk Headquarters Hospital, Ponnani and thereafter to West Fort Hospital, Thrissur. He underwent treatment at Medicare Hospital, Kodungallur thereafter. Ext.A3 discharge certificate shows the injuries as follows:

“1). Crush injury ® hand with rupture of tendon.

2). Fracture of 5th meta carpal”.

2. The appellant underwent inpatient treatment for a period of 65 days. He suffered fracture of right mandible. During the period of treatment at Medicare Hospital, Kodungallur, skin grafting was also done.

3. The claim petition was filed seeking compensation to the tune of Rs. 3 lakhs. The Tribunal awarded a sum of Rs. 70,750/-. This appeal is filed seeking enhancement of compensation. Learned counsel for the appellant submitted that the amount

awarded under various heads are thoroughly inadequate and the income taken is too low.

4. We heard the learned Senior counsel for the Insurance Company also who opposed the claim for enhancement, pointing out that reasonable amount has already been granted.

5. The appellant is stated to be a business man. The Tribunal awarded a sum of Rs. 9000/- towards loss of earning for a period of six months. Having regard to the fact that there is no dispute with regard to the avocation of the appellant, we are of the view that the monthly income of the appellant can be reckoned as Rs.2,000/- and therefore, compensation under the head of loss of earning will come to Rs. 12,000/-. Towards bystander expenses, the Tribunal has awarded only a sum of Rs. 1,000/-. He was hospitalised for a period of 65 days. Reckoning Rs. 100/- per day, we grant an amount of Rs. 6500/- towards bystander's expenses. The Tribunal has awarded a sum of Rs. 12,000/- towards pain and suffering. Having regard to the fact that the appellant sustained crush injury and he had undergone inpatient treatment for a period of 65 days and he required treatment even thereafter, we are of the view that a sum of Rs. 25,000/- can be granted towards pain and suffering. We find that compensation granted to other heads do not require any modification. Therefore, there will be an

enhancement of Rs. 21,500/- in the award amount making the total compensation as Rs. 92,250/-. The enhanced amount will carry interest at the rate of 9% p.a 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].

6. This Court has passed an order dated 13.7.2012 in C.M.Application No.707/2008, while condoning the delay of 887 days for filing the appeal, that the appellant will not be entitled to interest for the above period. Therefore appellant will not be entitled to interest for the said 887 days.

7. 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.

The appeal is allowed accordingly. No cost.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge