

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. 2386 of 2014

**AGAINST THE AWARD IN OP(MV) 689/2009 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL THODUPUZHA, DATED 21-03-2014**

APPELLANT(S)/(CLAIMANT BEFORE TRIBUNAL):

**AKHILADEVI, AGED 15 YEARS,
D/O. ANILKUMAR, KALLUPALATHINKAL HOUSE
CHENTHALAR KARA, UPPUTHARA VILLAGE
NOW RESIDING AT THAZHATHUPADIYIL HOUSE
KATTAPPANA KARA, IDUKKI KAVALA BHAGAM,
KATTAPPANA VILAGE, IDUKKI DISTRICT
MINOR REPRESENTED BY MOTHER MANJU, W/O. ANILKUMAR.**

**BY ADVS.SRI.S.SACHITHANANDA PAI
SRI.K.V.RAJEEV (PONOOTH)**

RESPONDENT(S)/(RESPONDENTS IN THE TRIBUNAL):

- 1. PADMAKUMAR, AGED 23 YEARS,
S/O. SIVASANKARA PILLAI, VAZHEKKATTU HOUSE
KATTAPPANA KARA, PEZHUKAVALA BAGAM, KATTAPPANA VILLAGE
UDUMBANCHOLA TALUK, IDUKKI, PIN-685508 (DRIVER)**
- 2. SIVASANKARA PILLAI,
S/O. PADMANABHAN, VAZHEKKATTU HOUSE, KATTAPPANA KARA
PEZHUKAVALA BAGAM, KATTAPPANA VILLAGE
UDUMBANCHOLA TALUK, IDUKKI, PIN-685508 (OWNER)**
- 3. UNITED INDIA INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE, MUVATTUPUZHA, PIN-686661.(INSURER)**

R3 BY ADV. SRI.PMM.NAJEEB KHAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

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M.A.C.A No.2386 of 2014

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Dated this the 5th day of March, 2015

JUDGMENT

Ramachandran Nair, J

A minor girl aged 10 years, who is represented by her guardian, is the appellant herein. On the date of accident, while she was walking by the side of Kattappana road, an auto rickshaw having Reg. No.KL-60/8799 came in an excessive speed and knocked her down. She was immediately taken to the St.John Hospital, Kattappana and was treated there.

2. The appellant sustained multiple abrasion forehead and right and left cheek, abrasion over nose, lips and contusion right shoulder, oedema right eye lids, fracture right frontal bone, basifrontal contusion and pneumocephalus. The same is supported by Ext.A4, copy of

the wound certificate. She was admitted in the Medical College Hospital on 17.08.2009 and was discharged from the hospital on 21.08.2009, which is clear from Ext.A7(a) copy of the discharge card. Again she was re-admitted on 11.09.2009 and was discharged on 19.09.2009, which is clear from Ext.A7(b). Thus, the total inpatient treatment is for 12 days.

3. The disability certificate issued by the Medical Board constituted by the Superintendent of District Hospital, Idukki has assessed 60% disability. Ext.A6 is the disability certificate.

4. The main dispute in this appeal is with regard to the reduced percentage of disability adopted by the Tribunal. The Tribunal has re-fixed the functional disability as 30%. The learned counsel for the appellant invited our attention to the observations made by the Tribunal after observing the petitioner when she appeared before the Tribunal, in paragraph 11. It is recorded as follows:

“Petitioner complaints of pain on shoulder and neck. The disability sustained by the petitioner had impaired the quality of life of the petitioner. It had restricted her movements and enjoyments of life. It had incapacitated the petitioner from doing the activities in which she had earlier performed. The Board has not mentioned the reasons for assessing 60% disability. So, 30% functional disability is assessed with respect to the petitioner.”

5. We have gone through the disability certificate. It appears that the major disability is because of the in-sufficiency of speech and hearing. Even though the Tribunal has assessed it as functional disability, it cannot be disputed that she being a student and is not having any occupation, it is premature to assess the loss of earning capacity at this age. Therefore, she will be entitled for compensation based on the percentage of disability, which will be the safe method according to us.

6. The Tribunal has allotted the notional monthly income at Rs.2000/- for calculating the compensation, which we confirm since she was of the age 10 at the time of accident. The multiplier adopted is 18, but going by the judgment in

Sarla Verma v Delhi Transport Corporation (2010(2) KLT 802(SC)) , it will be 15.

7. The compensation has been assessed by the Tribunal as per the table given below:

Sl. No.	Head of claim	Amount claimed (in Rupees)	Amount Awarded (in Rupees)	Basis vital details in a nut shell
1	Bystander expense	10000	2400	Rs.200 x 12 days x 1 person
2	Transporation expense	15000	3900	bills produced
3	Extra nourishment	5000	5000	
4	Medical expenses	20000	4290	bills produced
5	Damage to clothing		500	
6	Pain and suffering	75000	25000	injuries
7	Disability	100000	129600	2000 x 12 x 18 x 30/100
8	Loss of amenities	75000	20000	
	Total	Limited to Rs.3 lakhs	Rs.190690/-	Rs.190690/- along with interest at the rate of 8.5% per annum from 24.12.09 till realisation.

8. The learned counsel for the appellant submitted that the compensation granted towards pain and suffering and the loss of amenities should have been more considering the period of treatment, the serious injuries suffered and the

disabilities she has sustained.

9. The learned counsel for the Insurance Company submitted that the ascertainment of disability by the Tribunal is well justified and regarding pain and suffering, disability as well as loss of amenities also, the quantum allowed by the Tribunal is perfectly reasonable. Having considered various aspects including the period of treatment, nature of the injuries and the disability suffered, we recompute the compensation in the following manner:

Sl. No.	Head of claim	Amount Awarded by the Tribunal(in Rupees)	Amount awarded in this Court (in Rupees)
1	Bystander expense	2400	3000
2	Transporation expense	3900	3900
3	Extra nourishment	5000	5000
4	Medical expenses	4290	4290
5	Damage to clothing	500	500
6	Pain and suffering	25000	35000
7	Disability	129600	216000 (2000x12x15x60/100)
8	Loss of amenities	20000	35000
	Total	Rs.190690/-	Rs.302690/-

We also hold that the claimant will be entitled for interest at 9% per annum for the enhanced compensation. We permit the guardian (father of the child) to withdraw a further amount of Rs.25,000/- and the balance amount will be deposited in a Nationalised Bank in the name of the minor till she become a major.

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

Sd/-
P.V.ASHA (JUDGE)

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