

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 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

MACA.No. 2408 of 2014 ()

AGAINST THE AWARD IN OPMV 1514/2013 of M.A.C.T., KOZHIKODE

APPELLANT(S)/PETITIONER :-

MOHAMMED ANAS, AGED 19 YEARS
S/O.ABDUL GAFOOR, RESIDING AT CHAPPAYIL THODI HOUSE
KACHARIKUZHI VAYAL, SARADAMANDIRAM P.O. KOLATHARA
KOZHIKODE - 673 655.

BY ADVS.SRI.AVM.SALAHUDIN
SMT.A.D.DIVYA
SMT.EMIL STANLEY

RESPONDENT(S)/RESPONDENTS :-

1. MUHAMMED SHAFI, AGE NOT KNOWN,
S/O.ASSAIN, RESIDING AT THALAPPETTI HOUSE,
P.O.PERUVALLOOR, MALAPPURAM. 673 638
2. SHIJU K., AGED 36 YEARS, S/O.NANU K.
RESIDING AT VAYANODIPURAYI HOUSE, CHERUKAVU P.O
PULIKKAL, MALAPPURAM 673 637.
3. THE UNITED INDIA INSURANCE CO.LTD.
MICRO OFFICE: KP 111/1093, CITY CENTRE
2ND FLOOR KONDOTTY, MALAPPURAM 673 638

R3 BY ADV. SRI.S.ARUN RAJ
BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

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

M.A.C.A. No.2408 of 2014

Dated this the 22nd day of January, 2015

J U D G M E N T

Asha, J.

The appellant is an injured in a motor vehicle accident, that occurred on 5.5.2013. While he was waiting for a bus, he was hit down by a motorcycle. He sustained very severe injuries and was taken to the Medical College Hospital, Kozhikode and thereafter to the District Co-operative Hospital, Kozhikode. He sustained comminuted fracture both bones of distal 1/3rd of left leg and abrasion over the left leg. He underwent treatment in the District Co-operative Hospital, Kozhikode for a period of 13 days.

2. The appellant has filed claim petition seeking a compensation to the tune of ₹2,00,000/-. It was claimed that he was earning a monthly income of ₹11,000/-, on being engaged as a salesman in a private shop. He was aged 18 years at the time of accident. The Tribunal awarded a sum of ₹96,500/- towards compensation,

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reckoning his income at the rate of ₹3,000/- per month.

3. Towards loss of earning, the Tribunal reckoned wages for a period of three months and a sum of ₹9,000/- has been awarded under this head.

4. Learned counsel for the appellant submits that the amount of compensation awarded under various heads are thoroughly inadequate and enhancement is necessary reckoning his monthly income with reference to Ext.A8, the salary certificate produced by him before the Tribunal.

5. We have heard the learned counsel for the insurance company, who opposes the claim for enhancement, pointing out that there is no evidence to prove the income of the appellant.

6. It is seen that he was treated as an inpatient for a period of 13 days on account of fracture sustained on his both bones of his left leg. On account of this fracture, it is quite probable that he could not have gone for work atleast for a period of four months. Having regard to the fact that the accident occurred on 5.5.2013 and the wages prevailing

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at the relevant time, we fix the income of the appellant as ₹4,500/- per month. Therefore, the compensation under the head of loss of earning for a period of four months will come to ₹18,000/-.

6. The Tribunal has awarded ₹20,000/- towards pain and sufferings. Having regard to the fact that consequent to the accident, the appellant had undergone treatment as an inpatient as well as outpatient and considering the inconvenience he would have suffered on account of the accident for a period of four months, we consider it proper to enhance the compensation under this head to ₹30,000/-. No further modification is necessary on other heads. Accordingly, we modify the award of the Tribunal granting enhancement to the tune of ₹19,000/-.

7. It is seen that the Tribunal has awarded interest at the rate of 8% per annum. 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], we enhance the rate of interest at 9% per annum. The

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appellant is, therefore, entitled to a total compensation of **₹1,15,500/- (Rupees One Lakh Fifteen Thousand Five Hundred only)**. The insurance company shall deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal.

This appeal is allowed accordingly. No costs.

Sd/-
T. R. RAMACHANDRAN NAIR
JUDGE

Sd/-
P.V.ASHA
JUDGE