

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 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

MACA.No. 892 of 2008 (D)

AGAINST THE AWARD IN OPMV 121/2002 of MACT,KALPETTA
DATED 12-10-2006

APPELLANT/PETITIONER::

A.K.YOOSUF, S/O.KHADER
S/O. KHADER, KHADEEJA VILLA, PARAL
THALASSERY.
NOW RESIDING AT SHAJI NIVAS
HIGH SCHOOL ROAD, MEENANGADI POST
PURAKKADI AMSOM AND DESOM, BATHERY TALUK
WAYANAD DISTRICT.

BY ADVS.SRI.G.BALAMURALEEDHARAN (PARAVUR)
SRI.MATHEWS V.JACOB (PARAVUR)
SRI.N.T.NANDAKUMAR (PARAVUR)

RESPONDENT(S)/RESPONDENTS::

*1. C.S.LIMBASH, S/O.SKARIA
CHOLAYIL HOUSE, MAILAMBADI POST, MEENANGADI
BATHERY TALUK, WAYANAD DISTRICT.(DELETED)

2. TOMY, S/O. JOSEPH,
AGED 31 YEARS, VAZHAPPILLIYIL VEEDU, MALIAMBADY POST
MEENANGADI (VIA), BATHERY TALUK, WAYANAD DISTRICT.

3. THE NATIONAL INSURANCE CO. LTD.,
BRANCH OFFICE, KALPANA SHOPPING COMPLEX, KALPETTA POST
WAYANAD-673 121.

(RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT
THE RISK OF THE APPELLANT AS PER ORDER
DT.11.10.2013 IN I.A.2649/13 IN MACA.892/08)

R,R3 BY ADV. SRI.JOE KALLIATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.892 of 2008

Dated this the 13th day of January, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident. The accident occurred when a motor cycle hit him while he was standing on the side of the road. He sustained very severe injuries and was taken to hospital. As per the discharge summary card Ext.A5 issued from Baby Memorial Hospital, Calicut, he was found to have fracture shaft of right femur distal 1/3rd, supracondylar, intercondylar fracture (L) femur, fracture medial malleolus ® ischemic heart disease, diabetes mellitus. It is seen that he was initially admitted in Al-shifa Hospital, Perinthalmanna, where he underwent treatment from 08.12.2001 to 29.12.2001. He was thereafter readmitted there on 09.01.2002 and discharged on 17.01.2002. On 17.01.2002 he was admitted in the Indira Gandhi Co-operative Hospital, Thalassery, and was discharged on 23.01.2002. He was again admitted in Baby Memorial Hospital, Calicut on 23.01.2002 and discharged on 05.02.2002. He underwent treatment in Government General Hospital, Mahe also during the period from

05.02.2002 to 28.02.2002. Again he was admitted in Tellichery Co-operative Hospital, Thalassery, on 17.04.2003 and was discharged on 23.04.2003. The disability certificate shows that he incurred 40% disability. The injuries as well as the particulars of treatment and disability are proved by the appellant through Exts.A4 to A15 documents. Towards medical expenses, he incurred a sum of Rs.1,79,303.96 and the Tribunal has awarded the same.

2. The Tribunal has awarded a sum of Rs.2,66,605/- as total compensation. The appellant claimed that he was working as Manager of Milan Bakery owned by his son. He was aged 55 years and claimed a monthly income of Rs.4,000/-. The Tribunal reckoned his monthly income at Rs.1,800/- and awarded a sum of Rs.69,120/- towards disability compensation. The appellant is seeking enhancement on the ground that the amount awarded under various heads are inadequate.

3. We heard the learned counsel appearing for the Insurance Company also.

4. The appellant was aged 55 years and his claim is that he was earning monthly income of Rs.4,000/-, out of the avocation as Manager of Milan Bakery owned by his son. The

Tribunal reckoned his income only @ Rs.1,800/- per mensem. The appellant was examined himself as PW1 and deposed as to the income earned by him and other claims. In the light of the circumstances of the case and in the absence of evidence to the contrary, we deem it fit to fix the income @ Rs.2,500/- per mensem. The compensation towards disability is therefore recalculated and the same will come to Rs.96,000/-. Towards loss of earnings, the Tribunal has awarded only a sum of Rs.4,860/- for a period of 3 months. Going by the records of the treatment undergone by the appellant, we find that he had been under continuous treatment for a period of more than one year. Therefore the loss of earnings has to be recalculated for a period of one year @ Rs.2,500/- per mensem and he will be entitled to a sum of Rs.30,000/- under that head. He underwent treatment as an inpatient for a period of 81 days. The Tribunal awarded a sum of Rs. 2025/-alone towards expenses for hospital attendant. We refix the amount @ Rs.150/- and he will be entitled to a sum of Rs.12,150/-. He has undergone treatment in several hospitals and therefore, towards transportation charges we award a sum of Rs.4,000/- and towards extra nourishment we enhance the amount to Rs.5,000/-. The Tribunal has awarded a sum of

Rs.250/- alone towards damage to clothing and we refix the same as Rs.500/-. Towards pain and sufferings, the Tribunal has awarded a sum of Rs.8,000/- alone. Going by the grievous nature of injuries sustained to appellant, the prolonged treatment already undergone and the necessity for continued treatment, we find it just and reasonable to award a sum of Rs.60,000/- towards pain and sufferings. Similarly he will not be in a position to enjoy the normal avocation and the amenities of life due to the impact of the accident and the disability incurred. Therefore, we award an amount of Rs.50,000/- towards loss of amenities and loss of enjoyment of life as well as loss of shortened expectation of life. Accordingly we refix the compensation as follows:

<i>Sl.No.</i>	<i>Description</i>	<i>Amt.</i>
1	Compensation for disability (2500X12X8X40/100)	Rs. 96,000.00
2	Loss of earning	Rs. 30,000.00
3	Transport to hospital	Rs. 4,000.00
4	Extra nourishment	Rs. 5,000.00
5	Damage to clothing	Rs. 500.00
6	Bystander's expenses	Rs. 12,150.00
7	Medical expenses	Rs. 1,79,350.00
8	Pain and suffering	Rs. 60,000.00
9	Loss of amenities and loss of enjoyment of life and shortened expectation of life	Rs. 50,000.00

<i>Sl.No.</i>	<i>Description</i>	<i>Amt.</i>
	Total	Rs. 4,37,000.00

(Rupees Four lakhs thirty seven thousand only)

The appellant will be entitled to a total compensation of Rs.4,37,000/- (Rupees Four lakhs thirty seven thousand only). The Tribunal has awarded interest @ 6% per annum only. 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 to 9% per annum and the same will be payable from the date of petition. Insurance Company is directed to 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 and on such deposit being made, the claimant can withdraw the amount.

The appeal is allowed accordingly. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR

Judge

Sd/-

P.VASHA

Judge

rtr/

/true copy/

P.S to Judge