

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

MACA.No. 2194 of 2009 ()

AGAINST THE AWARD IN OPMV 1721/2004 of MACT, IRINJALAKUDA DATED
06-03-2009

APPELLANT/PETITIONER:

RAPHEL, S/O.KOLANCHERY CHEEKUTTY,
MATHILAKAM DESOM AND P.O., PAPPINIVATTOM VILLAGE
KODUNGALLUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.V.BABY

RESPONDENTS/RESPONDENTS:

1. K.S.RAJAN,
KANNARA HOUSE, KATTOR P.O., THRISSUR.

2. RADHAKRISHNAN,
S/O.NANDIKKALL VELAYUDHAN, KARALAM VILLAGE
VELLANI P.O., MUKUNDAPURAM TALUK.

3. UNITED INDIA INSURANCE CO. LTD.,
MAIN ROAD, NORTH PARAVOOR.

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.No.2194 OF 2009

Dated this the 4th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is by the claimant, who was injured in an accident which occurred on 8.9.2004. The learned counsel for the appellant sought for enhancement of compensation from the one granted by the Tribunal. As against the total claim of Rs. 5 lakhs, the Tribunal below has awarded Rs. 3,01,500/- under different heads.

2. Heard the learned counsel on both sides.

3. The appellant was driving his goods vehicle bearing Reg.No.KL-8/G 2668 on the said day and it was hit by a bus bearing Reg.No.KL 8 X 4991 causing serious injuries to him. He was aged 52 at the time of the accident. It is seen from the evidence that the appellant was admitted in the Metropolitan Hospital, Thrissur with the fracture of mandible with displacement, fracture of right tibia and compound fracture of right foot. Ext.A3 is the copy of the wound

certificate and Ext.A4 is the discharge card. He was treated as inpatient for a period of 24 days and it was diagnosed that it was a case of intra articular fracture of the right tibia (proximal), fracture dislocation of the tarso metatarsal joint, fracture of navicular, medial cuniform and cuboid, dislocation of the 2nd to 5th MTP joint, fracture of the medial condyle of left femur, fracture of the shaft of left tibia and fracture of mandible. For skin grafting, he was again admitted on 23.11.2004 and was discharged within one day.

3. The Kerala Solvent Extractions Ltd. had hired the appellant's goods vehicle for transporting goods to different places on the date of accident. He was obviously driving the vehicle also. His driving licence has been marked as Ext.A8. According to him, he was getting Rs.25,000/- per month and Ext.A9 certificate from the Kerala Solvent Extractions Ltd was produced in that regard. But the Tribunal fixed the monthly income at ₹4,000/- since Ext.A9 was only in respect of one item of work.

4. Going by the disability certificate - Ext.A6, his permanent disability is certified as 25%. This is on the ground of stiffness of knee

and ankle, shortening of right leg and also severe deformity of right leg. We have gone through the disability certificate. It is stated therein that he cannot drive any more vehicle without difficulty.

5. The learned counsel for the appellant submitted that there will be functional disability also. The Tribunal had occasion to view the petitioner when he appeared for giving evidence. It is noted in the award that the petitioner's right leg is now severely deformed, and shortening of right leg is also very much apparent. The Tribunal observed that the petitioner is having much difficulty to walk comfortably due to the deformity and shortening and that it will affect his job or earning capacity as driver, which is certified in Ext.A6 also.

6. As far as the monthly income is concerned, according to us, since he was a licensed driver, an amount of ₹6,000/- can be reasonably fixed as the monthly income for the purpose of fixing the compensation in the light of the judgment of the Apex Court in **Minu Rout and another v. Satya Pradyumna Mohapatra and others** (**2013 (10)SCC 695**). The Tribunal has granted amounts under various heads. It is evident that he will not be able to walk freely as

before and the deformity and shortening will really affect the normal avocation in life. Since the injuries are of very serious nature, for pain and suffering also, he will have to be properly compensated. For deformity and disfigurement also, due amounts will have to be granted. Coupled with the same, for bystander's expenses, transportation and extra nourishment also, due amounts will have to be granted. It is in evidence that he was immobile for six months. Therefore he will be entitled for partial loss of earnings accordingly.

7. Accordingly, we refix the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Disability	277200 (6000 x 12 x 11 x 35%)
Loss of earnings	36000
Pain and suffering	40000
Loss of amenities	40000
Disfigurement	25000
Transportation	2000
Extra nourishment	3000
Bystander's expenses	6250 (250 x 25)

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical expenses	101000
Total	530450 (Rupees five lakhs thirty thousand four hundred fifty only)

8. The enhanced amount will carry interest @ 9% per annum. The appellant will pay additional court fee, if any required, and the same will be recovered by the Tribunal from the amount to be deposited by the Insurance Company. We direct the Insurance Company to deposit the amount within three months.

The appeal is accordingly allowed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.