

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

MACA.No. 2484 of 2014 ()

AGAINST THE AWARD IN OPMV 911/2010 of MACT MUVATTUPUZHA
DATED 28-05-2014

APPELLANT/PETITIONER:-:

SINDHU
W/O.JOBY, CHOLLAL HOUSE, BATHANIPPADY
KUNNACKAL KARA, VALAKOM VILLAGE.

BY ADVS.SRI.T.K.KOSHY
SRI.ABE RAJAN

RESPONDENT(S)/RESPONDENTS/RESPONDENTS 1 TO 3:-:

1. FATHIMA BAVA
VATTAPPARA HOUSE, PATTIMATTOM P.O., KIZHAKKAMBALAM
PIN - 683 562.

2. RAMACHANDRAN K.T.,
KUTHUKALLUNGAL HOUSE, VALAMPUR, KADAYIRUPPU
IKKARANDU NORTH VILLAGE, KOLANCHERY, PIN - 682 311.

3. THE ORIENTAL INSURANCE CO.LTD.,
PALAKKATTU BUILDINGS, MARKET JUNCTION, THRIPPUNITHURA
PIN - 682 301.

R3 BY ADV. SRI.P.JACOB MATHEW
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 19-01-2015, ALONG WITH MACA. 2743/2014,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A No.2484 & 2743 of 2014

Dated this the 19th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant in M.A.C.A No.2743 of 2014, the husband and the appellant in M.A.C.A No.2484 of 2014, his wife, have come up in appeal. Both were injured in the same accident and these appeals are confined to the inadequacy of the compensation.

2. The accident occurred on 14.07.2010 at 1.40 p.m. The husband was riding a motorcycle while the wife was travelling as a pillion rider. They were travelling through the Pazhanganadu-Kozhakkambalam public road when the offending vehicle a tipper lorry bearing Reg.No.KL-40/B 5017 came in an excessive speed in the opposite direction and hit against the motorcycle at Thamarachal bhagom.

3. Both were admitted immediately in the hospital as they sustained serious injuries. The Tribunal found negligence

on the part of the driver of the offending vehicle.

4. As against the claim of Rs.7 lakhs in both the cases, in favour of the appellant in M.A.C.A No.2743 of 2014, Rs.3,42,600/- and in favour of the appellant in M.A.C.A No.2484 of 2014, Rs.3,12,200/- have been granted.

5. We heard the learned counsel for the appellants Sri T.K.Koshy and the learned Senior Counsel Sri Mathews Jacob, for the Insurance Company.

6. The award in para.12 describes the injuries sustained by the appellant (husband) in M.A.C.A No.2743/2014. Ext.A7 is the discharge summary and we reproduce the same.

“Blood clot in urinary bladder lumen
Pelvic haematoma
Minimal free fluid in peritoneal cavity
Fluid and blood density in right half of
retroperitoneum
Tiny right renal calculus
Posterior abdominal wall muscle defect just
superior to left iliac crest
Minimal fluid in pleural spaces bilaterally
Tiny foci or air in superior aspect of left pleural
space
Pubic symphysis diastasis
Bilateral joint SI diastasis
Comminuted and displaced fracture of right
sacral ala
Fracture of left transverse process of partially
sacralised 1.5 vertebra
Displaced fracture of left transverse process of

1.4 Vertebra.”

Both of them were admitted in the Kolencherry Medical College Hospital. The husband had undergone inpatient treatment for 17 days. Going by Ext.A8 certificate, the following findings have been recorded therein.

“Polytrauma : Extraperitoneal bladder rupture
Pubic symphysis diastasis, right sacro iliac joint
disruption, laceration left leg.”

7. The appellant husband had to be treated in 3 different departments, ie. Oral and Maxillofacial Surgery, Plastic, Hand & Microvascular Surgery and Urology. Ext.A10 is the certificate showing the treatment given by the Oral and Maxillofacial Surgery. Ext.A11 is the certificate issued by the Plastic Surgery Department. It shows that the appellant had undergone anterior tibial artery based propeller flap cover for the foot injury along with the Orthopaedic procedure.

8. The disability certificate Ext.C1 shows that the permanent disability sustained by the appellant is 22% as per the Mc Bride's Scale. The same is issued by the Medical Board of the District Hospital, Ernakulam. The important clinical findings include ankylosis.

9. The learned counsel for the appellants submitted that the compensation has been inadequately granted under various heads. Para.16 of the award gives the table showing the award of compensation and we reproduce the same below:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earning	Rs. 21,000.00
2	Pain and sufferings	Rs. 60,000.00
3	Loss of amenities	Rs. 40,000.00
4	Bystander expenses	Rs. 2,550.00
5	Extra nourishment charges	Rs. 2,500.00
6	Transportation charges	Rs. 500.00
7	Medical treatment charges	Rs. 95,977.00
8	Compensation for permanent disability	Rs. 1,47,840.00
	TOTAL	Rs. 3,70,367.00

10. Herein the appellant had a case that he was working as an Aluminium Fabrication Worker. The Tribunal has assessed compensation by fixing Rs.3,500/- as the monthly income. The learned counsel for the appellants submitted that the income was claimed only at Rs.8,000/- which was reasonable.

11. The learned Senior Counsel for the Insurance Company submitted that there was no evidence actually by way of documents to show that he was an Aluminium Fabrication Worker earning Rs.8,000/-. Since the accident was of the year

2010 even though there was no documentary evidence to support the claim, we are of the view that Rs.4,500/- can be taken as the monthly income and accordingly the compensation can be arrived at.

12. In so far as the medical bills are concerned, an amount of Rs.1,19,787/- was claimed and Ext.A12 series are the original medical bills produced by the petitioner and Ext.A12(a) series are the consolidated statement of bills issued from the Medical College Hospital, Kolencherry. The Tribunal by entering a finding that the original bills represent an amount of Rs. 95,977/- alone, granted only the said amount.

13. The learned counsel for the appellant submitted that merely because the remaining amount is not supported by the bills, since Ext.A12 series are there which are certified by the hospital itself, the said amount could have been granted. The learned Senior Counsel for the Insurance Company submitted that the Tribunal's view cannot be found fault with since the amount representing the bills have been granted. We have gone through the certificate Ext.A12(a). The same is issued by the hospital and certified by the Finance Manager of the hospital.

Even though the receipts for payment in some items are not produced, since there is a certificate issued by the hospital itself, the same can be accepted and therefore we grant an amount of Rs.1,19,787/- towards medical expenses.

14. As far as the disability is concerned 22% has been assessed by the Tribunal. There is no evidence to show that there is any functional disability and consequential loss of earning power. Vehement argument raised by the learned counsel for the appellant is that the functional disability can be assessed by this Court based on these certificates. But being an Aluminium Fabrication Worker, we do not think that the disability at 22% will result in affecting the capacity of the appellant for doing any hard work or in undertaking any fabrication work. The learned Senior Counsel for the Insurance Company submitted that the appellant has not given any evidence also with regard to any occupational disability. Having regard to the various aspects, we are of the view that there is no evidence to show that there will be loss of earning power, due to the disability.

15. The learned counsel for the appellant then submitted

that the amount awarded towards loss of earning at Rs.21,000/- is too low. It is submitted that even though he was treated as an inpatient only for 17 days, there is every likelihood that he continued the treatment thereafter. But going by the certificates Exts.A7 & A8, they do not indicate that he has to undertake any continuous treatment after the completion of the period of inpatient treatment. The Tribunal has granted loss of earnings for a period of 6 months and we confirm the same, but with a modification of the amount namely for 6 months @ Rs.4,500/-, which will come to Rs.27,000/-.

16. As far as pain and suffering is concerned, it is clear that he was treated in 3 different departments and different treatment procedures have been undertaken. According to the learned counsel for the appellant, the various treatments under the Urology department are specially to be mentioned apart from the Orthopaedic treatments as well as Oral and Maxillofacial surgery. It is submitted that he had to bear the sufferings from the injuries for a sufficiently long time and it is also pointed out that the certificates will show that there was rupture to the urinary bladder and other serious injuries also.

17. We are of the view that even though the appellant has claimed only Rs.50,000/- under the head pain and sufferings, going by the treatment procedures undertaken and the effect of the injuries and hardships he had suffered, an amount of Rs.70,000/- will be a reasonable compensation and we grant the same.

18. The next item according to the learned counsel for the appellant which requires enhancement is compensation for loss of amenities in life and loss of enjoyment of life. The head 'loss of enjoyment of life and loss of amenities in life' will have to be considered along with 'shortened expectation of life' of the claimant. As far as the appellant's normal activities in life are concerned, it is clear that the injuries have really deprived him of the pleasures of his life. Even though for loss of earning power we are not granting any amount, since there is permanent disability on different counts, a reasonable amount can be awarded for loss of enjoyment of life and loss of amenities. We enhance the amount granted under the head loss of amenities by treating it as 'loss of amenities and loss of enjoyment in life and shortened expectation of life', to Rs.60,000/-. The bystander's

expenses has been granted at Rs.2,550/- and we enhance the same to Rs.4250/-.ie. @ Rs.250/- per day for 17 days. We also enhance the transportation charges from Rs.500/- to Rs.3,000/-.

19. Therefore we recompute the compensation in the following manner:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earning	Rs. 27,000.00
2	Pain and sufferings	Rs. 70,000.00
3	Loss of amenities and enjoyment of life and shortened expectation of life	Rs. 60,000.00
4	Bystander expenses	Rs. 4,250.00
5	Extra nourishment charges	Rs. 2,500.00
6	Transportation charges	Rs. 3,000.00
7	Medical treatment charges	Rs. 1,19,787.00
8	Compensation for permanent disability (Rs.4,500X12X16X22/100)	Rs. 1,90,080.00
	TOTAL	Rs. 4,76,617.00 round off to Rs. 4,76,600.00

(Rupees Four lakhs seventy six thousand
and six hundred only)

20. The Tribunal has reduced the compensation by 7.5% on the ground that the appellant did not produce driving license before the Tribunal. The learned counsel for the appellant submitted that when negligence is found as against the driver of

the offending vehicle, such a direction ought not have been issued. The learned Senior Counsel for the insurance company submitted that the finding of the Tribunal in this regard is justified.

21. What we find from the award is that the Tribunal on the basis of Exts.A1 to A5 - certified copies of documents in Crime No.197/2010 of Thadiyittaparambu Police Station in a criminal case registered against the driver of the offending vehicle found that he was charged for offences punishable under Sections 279, 337 & 338 I.P.C and accordingly was of the view that there is rash and negligent driving of the vehicle by the driver of the offending vehicle namely, the 2nd respondent, and he is liable for the accident.

22. In para.9 of the award it is stated that there is failure to produce the driving license and there is violation of Section 3 of the Motor Vehicles Act, 1988. But we find that he was not charged by the police alleging any such offences. When there is a finding regarding the negligence as against the driver of the offending vehicle, we find no reason to reduce the compensation on such a ground. Therefore we are of the view that the

claimant is entitled for the entire amount as awarded above.

23. Accordingly the appellant husband in M.A.C.A No.2743/2014 will be entitled to a total compensation of Rs.4,76,600/- (Rupees Four lakhs seventy six thousand and six hundred only). This will carry interest @ 9% per annum from the date of petition. The 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 M.A.C.A No.2743 of 2014 is accordingly allowed. No costs.

24. In M.A.C.A No.2484/2014 also the claim is for enhancement. Therein even though the appellant claimed that she is having functional disability to work as a Laboratory Assistant, the Tribunal has not evidently accepted that plea. The learned counsel for the appellant vehemently submitted that the appellant is having 20% disability and the disabilities have been sustained to the lower limbs which will trouble her in functioning as such. Herein the appellant has no case that she is unable to

perform the same job as before. It is also not in evidence that she is finding any difficulty to pursue her employment also. As rightly pointed out by the learned Senior Counsel for the Insurance Company, there is no assessment of functional disability and consequent loss of earning power by the Medical Board also. In that view of the matter, we do not agree with the learned counsel for the appellant that there will be functional disability.

25. The period of treatment as far as the appellant is concerned is 34 days. The appellant had sustained degloving injury left foot, fracture of talus, fracture of calcaneus and fracture of lateral malleolus. Firstly we will consider whether any amount has to be enhanced towards monthly income which is assessed by the Tribunal at Rs.3,500/-. Herein the claim was @ Rs.4,500/- since she has been working as a Laboratory Assistant. We find that the claim @ Rs.4,500/- is justified.

26. The Tribunal's award shows that amounts have been awarded in the following manner going by para.21 of the award.

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earning	Rs. 17,500.00
2	Pain and sufferings	Rs. 35,000.00
3	Loss of amenities	Rs. 25,000.00
4	Bystander expenses	Rs. 4,800.00
5	Extra nourishment charges	Rs. 4,000.00
6	Transportation charges	Rs. 500.00
7	Medical treatment charges	Rs. 77,577.00
8	Compensation for permanent disability	Rs. 1,42,800.00
9	Compensation for disfiguration	Rs. 5,000.00
	TOTAL	Rs. 3,12,177.00

27. Bills produced by the appellant for claiming expenses towards medical treatment are to the tune of Rs.89,222/-. The Tribunal has granted an amount of Rs.77,577/- under the said item by finding that some of the original bills have not been produced. The learned counsel for the appellants submitted that since both the husband and wife were injured, any laches on their part to produce bills for such an amount cannot be taken against them since the Medical College hospital has issued Ext.A16 series of consolidated statements showing that Rs.89,222/- has been received by them towards treatment charges. We find force in the above argument. In that view of the matter, accepting A16 series, we award the amount of

Rs.89,222/- towards medical expenses.

28. By considering the nature of injuries, resultant disability, the period of treatment and the loss of amenities and loss of enjoyment of life as well as disfiguration, we are of the view that the appellant is entitled for reasonable compensation by enhancing the amount under different heads as discussed below. Even though the learned counsel for the appellant submitted that loss of earnings is granted only for 5 months, since there is no evidence to show that after the inpatient treatment she was advised rest for a longer period, we find that the award under the said head is reasonable. She will be entitled for grant of the same @ Rs.4,500/- per mensem and the total amount under the head loss of earning will be Rs.22,500/- (Rs.4,500/-X5). Towards pain and suffering, we grant an amount of Rs.45,000/- and for loss of amenities, we find that in the light of the ankylosis she has suffered and the consequent troubles she will have to face to pursue her normal avocations, both as a Laboratory Assistant and in her personal life, we grant an amount of Rs.50,000/- for loss of enjoyment of life, loss of amenities of life and shortened expectation of life. As far the

bystander's expenses is concerned, we grant @ Rs.250/- per day for 34 days which will be Rs.8,500/-. We enhance the compensation under the head transportation to Rs.3,000/-. For disfiguration, we grant an amount of Rs.10,000/- in view of the evidence Ext.A17, photographs.

29. Accordingly we modify the award as follows.

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earning	Rs. 22,500.00
2	Pain and sufferings	Rs. 45,000.00
3	Loss of amenities and enjoyment of life and shortened expectation of life	Rs. 50,000.00
4	Bystander expenses	Rs. 8,500.00
5	Extra nourishment charges	Rs. 4,000.00
6	Transportation charges	Rs. 3,000.00
7	Medical treatment charges	Rs. 89,222.00
8	Compensation for permanent disability (Rs.4,500X12X17X20/100)	Rs. 1,83,600.00
9	Compensation for disfiguration	Rs. 10,000.00
	TOTAL	Rs. 4,15,822.00 round off to Rs. 4,15,800.00

(Rupees Four lakhs fifteen thousand
and eight hundred only)

30. Accordingly the appellant wife in M.A.C.A No.2484/2014 will be entitled to a total compensation of Rs.4,15,800/- (Rupees Four lakhs fifteen thousand and eight hundred only). This will carry interest @ 9% per annum from the date of petition. The 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 M.A.C.A No.2484 of 2014 is accordingly allowed. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge