

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

MACA.No. 2505 of 2014 ()

AGAINST THE AWARD IN OPMV 726/2011 of MACT PALA
DATED 19-05-2014

APPELLANT(S)/PETITIONER:

VISWANATHAN,
S/O.RAGHAVAN, KOLENCHIRA HOUSE, MUKKOTTUTHARA
ERUMELY VILLAGE, KOTTAYAM DIST.

BY ADVS.SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.MANU TOM

RESPONDENT/3RD RESPONDENT:

THE MANAGER,
THE NEW INDIA ASSURANCE CO.LTD.
MUNICIPAL COMPLEX BUILDINGS, PALA
KOTTAYAM DIST.-686575.

R-R BY ADV. SRI.P.G.GANAPPAN
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 23-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.2505 of 2014

Dated this the 23rd day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the injured claimant in a motor vehicle accident. He was aged 60 years at the time of the accident and the accident occurred on 11.02.2011 while he was travelling in an autorickshaw bearing Reg.No.KL-34/A-783 from Changanacherry to Vazhoor at Mammood junction. The offending vehicle namely, another autorickshaw bearing Reg.No.KL-33/A-130 hit the vehicle in which the appellant was travelling. He sustained serious injuries.

2. The learned counsel for the appellant submitted that in spite of the assessment of percentage of disability at 10% by the Medical College Hospital, Kottayam, the Tribunal has reduced it to 5% for the purpose of assessing the loss of earnings. It is further submitted that he was a businessman in life and because of the adverse effects of the disability on his body, he is unable to pursue the said business and the Tribunal did not grant any amount towards the loss of amenities in life and loss of enjoyment of life. It is also submitted that the compensation granted towards partial loss of earnings and pain

and sufferings are also inadequate.

3. We heard the learned counsel for the Insurance Company who submitted that the assessment made by the Tribunal in order to arrive at the compensation is perfectly in order.

4. The appellant was claiming monthly income @ Rs.8,000/- which is recorded in para.11 of the award. On the finding that there is no evidence to show that he was running a business, the Tribunal adopted monthly income at Rs.5,000/-. Even though the learned counsel for the appellant vehemently pleaded for taking the monthly income as claimed, that too on the basis that he was a timber merchant, as rightly pointed out by the learned counsel for the Insurance Company, there is no documentary evidence or any other reliable evidence in support of the above claim. Then the question is whether the assessment made by the Tribunal is too low. The accident occurred in the year 2011. He was aged 60 years at the time of the accident. Therefore, in the absence of any other evidence we find that the amount fixed as Rs.5,000/- cannot be said to be low and we confirm the same.

5. The injuries sustained by him are the following:

“Lacerated wound on the forehead 5 cm frontal region, lacerated wound on the forearm lateral aspect, suspected fracture of the cervical vertebra.”

He was treated in the Medical College Hospital, Kottayam and Ext.A7 is the discharge card issued by the hospital. He was treated from 11.02.2011 to 26.02.2011.

6. The learned counsel for the appellant submitted that he had to take rest for a considerable period of time and therefore the partial loss of earning should have been granted for a period of six months after discharge. We have gone through the evidence of PW1. Of course he has described the details about the accident etc. in the deposition. The Tribunal has granted loss of earning for a period of 3 months only. We grant Rs.5,000/- more for an additional one month on this account, after considering PW1's evidence.

7. Towards bystander's expenses, Rs.3,000/-, for transport to hospital Rs.2,000/- and for extra nourishment Rs.1,000/- have also been granted. The total amount awarded for medical expenses is Rs.5,750/-. We find that the assessments on all these heads are moderate and do not require any enhancement.

8. The next question is whether the compensation fixed

for pain and sufferings is justified and reasonable. The petitioner has explained in his evidence the difficulties he had experienced and the pain because of the neck movements. This is recorded in the disability certificate also. Apart from the same, in Ext.A7 it is recorded that he was referred to psychology and neurology departments also and he had to undergo treatment there. All these would have contributed continued pain for him because of the injury. Therefore, we award an amount of Rs.30,000/- towards pain and sufferings.

9. As far as the amount granted towards loss of earning power is concerned, according to us, the absence of any certificate by the Medical Board of the loss of earning capacity, it should have been reckoned under the permanent disability sustained by him. We have gone through the certificate which is Ext.X1. We note down the following details from the certificate which will show the present disabilities:

"Persent disabilities

C/o-

Headache on and off, Paresthesia both UL and LL.

O/E:-

Grade 5 power both upper and lower limbs (proximal muscle group)

Deep tendon reflexes normal.

Painful limitation of neck Movements, Loss of dexterity both hands, Headache on and off ...10%"

10. The main disabilities are the painful limitation of neck

movements, loss of dexterity both hands and Headache on an and it is assessed at 10%. When examined before the Tribunal he has explained these details. But the Tribunal found that as he was moving head freely, the disability is taken as 5%. But even if the same is as noticed by the Tribunal, the movement of neck is painful even going by the certificate, and it cannot be a case where the disability can be reduced to 5% as done by the Tribunal. Therefore, we accept the disability itself as 10%. If that be so, the compensation for permanent disability will be Rs.54,000/-.

11. The permanent disability sustained by him will be affecting his enjoyment of life and amenities in life also. The learned counsel for the appellant went to the extent of submitting that the appellant is unable to travel and he is unable to do any hard job and climb steps etc. The fact that the disability will cause inconvenience and difficulties to him is evident. Therefore, we award an amount of Rs.20,000/- towards loss of amenities in life and enjoyment of life.

12. The award is accordingly modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earnings	Rs. 20,000.00
2	Transport to hospital	Rs. 2,000.00

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
3	Extra nourishment	Rs. 1,000.00
4	Treatment expenses	Rs. 5,750.00
5	Bystander expenses	Rs. 3,000.00
6	Pain and suffering	Rs. 30,000.00
7	Compensation for permanent disability (5000X12X9X10/100)	Rs. 54,000.00
8	Loss of enjoyment of life and amenities in life	Rs. 20,000.00
	TOTAL	Rs. 1,35,750.00

(Rupees One lakh thirty five thousand seven hundred and fifty only)

13. The appellant will be entitled to a total compensation of Rs.1,35,750/- (Rupees One lakh thirty five thousand seven hundred and fifty 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 is allowed accordingly. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR

Judge

Sd/-

P.VASHA

Judge

rtr/

/true copy/

P.S to Judge