

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

MACA.No. 2515 of 2014 ()

AGAINST THE AWARD IN OPMV 610/2010 of M.A.C.T., ERNAKULAM
DATED 10-07-2014

APPELLANT/PETITIONER:

A. VENUGOPALAN, AGED 55 YEARS
S/O KRISHNAN NAIR, MANGATTIL HOUSE,
MAGALIYATH NADA,
IRUMBANAM P.O., ERNAKULAM DISTRICT.

BY ADVS.SRI.P.M.JOSHI
SMT.SIJI K.PAUL

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

1. M.B. MADHU
S/O. MR.BOSE, AGE NOT KNOWN,
MUNDEPADATH HOUSE, VADAKKEKKARA P.O.
NORTH PARAVOOR, NEENDOOR-683522.

2. THE MANAGER
UNITED INDIA INSURANCE COMPANY LIMITED, ALUVA-1.

R2 BY ADV. SRI.P.V.JYOTHI PRASAD
R BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 21-01-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A No.2515 of 2014

Dated this the 21st day of January, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident occurred on 08.10.2008. He was hit by a motor cycle with registration No.KL 07/AY-5226 while he was walking through Irumpanam-Karingachira road. He fell down and sustained severe injuries. He was taken to VKM hospital, Tripunithura. He sustained compound fracture tibia and fibula of the left leg. He underwent treatment as an inpatient till 18.10.2008. The treatment certificate as well as the wound certificate give details of injuries and the treatments he underwent. According to him, interlocking nailing was done in the hospital.

2. The appellant was a coolie, aged 55 years. It was claimed that he was earning Rs.5,000/- monthly. The claim petition was filed seeking compensation to the tune of Rs.2,65,000/- which was limited to Rs.2 lakhs.

3. The Tribunal awarded a sum of Rs.62,320/- reckoning his income @ Rs.4,000/- per mensem. This appeal is filed

seeking enhancement of compensation on the ground that the income reckoned by the Tribunal is low and similarly the amount awarded towards compensation under various heads are inadequate.

4. We heard the learned counsel appearing on either side. The learned counsel appearing for the Insurance Company supported the award and contended that the compensation awarded is reasonable.

5. The learned counsel for the appellant pointed out that the Tribunal has awarded only a sum of Rs.700/- towards treatment expenses, even though he had produced all the details regarding the charges paid towards treatment underwent. It was stated that the original bills were lost and he produced duplicate bills. The Tribunal did not accept it. According to the appellant, a sum of Rs.30,132.60 was charged by the hospital. The duplicate bill shows the treatment period as 08.10.2008 to 18.10.2008. The injuries sustained by appellant or the treatment undergone by him are not disputed. We therefore find that the appellant is entitled to get the amount covered by the inpatient bill issued by the hospital and hence award a sum of Rs.30,132.60 towards medical expense. This is in addition to the

amount already awarded, ie. Rs.700/- by the Tribunal. The Tribunal has awarded a sum of Rs.16,000/- towards loss of earnings, observing that he was unable to undertake any work for a period of 4 months. The learned counsel for the appellant pointed out that the appellant was unable to undertake any work for a period of at least six months on account of the injuries sustained on his left leg. Regarding the income also, the appellant had claimed Rs.5,000/- per month as against the sum of Rs.4,000/- awarded by the Tribunal. We find that a sum of Rs.4,500/- per mensem can be reckoned as the monthly income of a Coolie having regard to the wage structure prevailed in the year 2008 and in the light of the judgment of the Apex Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.** [2011(13) SCC 236], where the monthly earnings of a coolie involved in an accident in 2004 was fixed as Rs.4,500/-. Therefore, we award a sum of Rs.27,000/- towards loss of earnings for a period of 6 months (Rs.4,500X6). The Tribunal has awarded only a sum of Rs.1,000/- towards transport to hospital and back to home. It is seen that the appellant had to visit hospital several times subsequent to the accident on 08.10.2008 and he had to incur expenditure towards

transportation for his visits. We enhance the compensation under this head to Rs.2,000/-. The Tribunal has awarded a sum of Rs. 2000/-towards bystander expenses for 11 days of in-patient treatment. We enhance the same reckoning the rate at Rs. 250/- per day to 2750/-. Towards compensation for pain and sufferings, the Tribunal has awarded only a sum of Rs.20,000/- as against the claim raised by the appellant for Rs.40,000/-. We find that the appellant underwent multiple surgeries on account of the compound fracture sustained by him on his left leg and he was unable to attend to his own personal needs for a long time. Having regard to the pain and mental agony that he would have experienced during this time at the age of 55, we enhance the compensation amount for pain and sufferings to Rs.30,000/-. Towards compensation for continuing permanent disability, the Tribunal awarded a sum of Rs.21,120/- on the basis of the disability assessed by the Medical Board as 4%. As we have reckoned the income of the appellant as Rs.4,500/- the compensation awarded under the above head is recalculated as Rs.4,500/- X 12 X 4/100 X 11, which will come to Rs.23,760/-. The Tribunal has not awarded any amount towards future treatments. It is pointed out that the interlocking nailing and the

implants done during the treatment has not been removed so far. It is seen that further expenses would be incurred towards future treatment for removing the same and therefore we award a sum of Rs.7,500/- towards future treatment.

6. Accordingly we modify the award as follows.

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earnings	Rs. 27,000.00
2	Transport to hospital and back to home	Rs. 2,000.00
3	Extra nourishment	Rs. 1,000.00
4	Damage to clothes and articles	Rs. 500.00
5	Attendant expenses	Rs. 2,750.00
6	Treatment expenses(700+30,132.60)	Rs. 30,832.60
7	Compensation for pain and sufferings	Rs. 30,000.00
8	Compensation for continuing and permanent/partial disability (4500X12X4/100X11)	Rs. 23,760.00
	TOTAL	Rs. 1,17,842.60 round off to Rs. 1,17,800.00

(Rupees One lakh seventeen thousand eight hundred only)

7. Accordingly the appellant will be entitled to a total compensation of Rs.1,17,800/- (Rupees One lakh seventeen thousand 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 is accordingly allowed. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge

The table occurring at page 5 of the judgment dated 21.01.2015 in M.A.C.A No.2515/2014 is modified as follows by incorporating a sum of ₹ 7,500/- as against the head 'Future treatment';

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
1	Loss of earnings	₹ 27,000.00

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.awarded</i>
2	Transport to hospital and back to him	₹ 2,000.00
3	Extra nourishment	₹ 1,000.00
4	Damage to clothes and articles	₹ 500.00
5	Attendant expenses	₹ 2,750.00
	Treatment expenses	₹ 30,832.60
6	(₹700 + 30,132.60)	
7	Compensation for pain and sufferings	₹ 30,000.00
	Compensation for continuing and permanent/partial disability (₹ 4500x12x4/100x11)	₹ 23,760.00
8		
9	Future treatment	₹ 7,500.00
	Total	₹ 1,25,342.60
		round off to
		₹ 1,25,300.00

and the total compensation “₹ 1,17,800/- (Rupees One lakh Seventeen thousand eight hundred only)” occurring in paragraph 7 is corrected as “₹ 1,25,300/- (Rupees One lakh twenty five thousand and three hundred only)”.

Vide order dated 30/03/2015 in R.P.No.197/2015 in M.A.C.A No.2515/2014.

Sd/-
Registrar (Judical)