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. 2541 of 2014 ()

AGAINST THE AWARD IN OPMV 82/2005 of MACT, MAVELIKKARA DATED 30-08-2014

APPELLANT/PETITIONER:

VIJAYAN
MUKALUVILAYIL VEEDU, PANAYIL MURI, PANAYIL P.O.
PALAMEL, NOORANADU.

BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN

RESPONDENT(S)/RESPONDENTS:

1. HARIKUMAR (DRIVER CUM OWNER)
SREE HARI, PANAYIL P.O., NOORANADU
MAVELIKARA - 690 101.

2. NATIONAL INSURANCE COMPANY LTD
REPRESENTED BY ITS DIVISIONAL MANAGER
DIVISIONAL OFFICE, KAYAMKULAM - 690 502.

R2 BY ADV. SRI.PMM.NAJEEB KHAN
R BY SRI.M.A.GEORGE

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.

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M.A.C.A No.2541 of 2014

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Dated this the 13th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The injured claimant is the appellant, who is aggrieved by the inadequacy of the quantum of compensation.

2. The accident occurred on 23.03.2004 at about 7.30 p.m while he was travelling as a passenger in a Jeep bearing Reg. No.KL.03.C.1944 belonging to the 1st respondent who was the driver and owner of the vehicle. Because of the rash and negligent driving the Jeep hit against a cashew tree, as a result of which, the front wind screen glass was broken and thereby a branch of the tree pierced through the left shoulder of the appellant who was sitting on the front left side seat of the jeep. He sustained serious injuries. They are:- (1) Lacerated injury on the root of the neck left side extending upto the shoulder region, 2. fracture clavicle left, 3. C6, C7, C8 and T1 root avulsion, 4. subclavian artery interna tear with thrombus, 5. Haemopnuemotherax left chest, 6. penerating injury left side root of neck with brachial pluxus injury, 7. weakness of left upper limb, 8. vascular injury left side. Exts.A6 to A10 are the

medical certificates.

3. He was taken to the N.S.S Medical Mission Hospital, Pandalam initially, from which hospital he was referred to the Medical College Hospital, Kottayam. The appellant was aged 42 years at the time of the accident and was working as a Painter. He claimed monthly income @ Rs.5,000/-. The accident has resulted in immobility of his left hand because of the shoulder injuries. This has been found in favour of the appellant by the Tribunal also. Going by the disability certificate (Ext.X1), 38% permanent disability has been certified. PW2 doctor was examined also. He confirmed that appellant cannot do painting work with left hand. Functional disability has also been claimed based on it which is opposed by the learned counsel for the respondent. The learned counsel for the appellant also submitted that since as a Painter he will not be able to do the same job, the functional disability will have to be assessed at 100% instead of 38% found by the Tribunal. The learned counsel for the Insurance Company submitted that he will be able to do other works and therefore the functional disability need not be assessed at 100%. The finding by the Tribunal is that the left hand is hanging down without power of grip and he cannot do

any work. Going by the treatment undergone by the appellant at the time of the accident, it can be seen that due to the shoulder injuries, his left hand is non functional and for a Painter both limbs are necessary for doing his work and we will be justified in concluding that there will be 100% disability for doing work as a Painter.

4. The Tribunal has assessed the monthly income at Rs.3,000/- and then added 30% for increase for future prospect. It is submitted by the learned counsel for the Insurance Company that 30% addition granted for future prospect is not justified. Since the work of a Painter is a skilled job, we are of the view that we will be justified in taking Rs.4,000/- as the monthly income without any increase being granted for future prospects.

5. The Tribunal has granted compensation in the following manner:

Sl.No.	Head of claim	Amt. awarded
1	Loss of earnings	Rs. 30,000.00
2	Medical and miscellaneous expenses	Rs. 5,330.00
3	Bystander's expense	Rs. 1,000.00
4	Transportation charges and others	Rs. 3,360.00
5	Extra nourishment	Rs. 3,000.00
6	Damage to clothing, etc.	Rs. 500.00

7	Pain and sufferings	Rs. 30,000.00
8	Loss of amenities in life	Rs. 25,000.00
9	Compensation for disability and loss of earning power	Rs. 2,48,976.00
	Total	**Rs 3,47,166.00**

6. The appellant will be entitled for loss of earning @ Rs.4,000/- for 10 months (Rs.40,000/-). We are not interfering with the award for the amount granted for items 2, 3, 4, 5 and 6. But in the light of the injuries sustained by him and the treatment undergone including one surgery, we are of the view that Rs.40,000/- can be granted towards pain and sufferings. For loss of amenities in life Rs.25,000/- has been granted by the Tribunal. It is clear that he will have to depend on others for his normal avocation. He will not be able to travel or perform other activities and undertake his normal avocations, as before. There will be shortening of expectation of life of the appellant also. Therefore, we grant an amount of Rs.50,000/- under the head \`shortened expectation of life'. Accordingly we modify the award as follows:

Sl.No.	Head of claim	Amt. awarded
1	Loss of earnings	Rs. 40,000.00
2	Medical and miscellaneous expenses	Rs. 5,330.00
3	Bystander’s expense	Rs. 1,000.00
4	Transportation charges and others	Rs. 3,360.00
5	Extra nourishment	Rs. 3,000.00
6	Damage to clothing, etc.	Rs. 500.00
7	Pain and sufferings	Rs. 40,000.00

8	Loss of amenities in life	Rs. 25,000.00
9	Compensation for disability (4000X12X14)	Rs. 6,72,000.00
10	Shortened expectation of life	Rs. 50,000.00
	Total	Rs 8,40,190.00

(Rupees Eight lakhs Forty thousand one hundred and ninety only)

The appellant will be entitled to a total compensation of Rs.8,40,190/- (Rupees Eight lakhs Forty thousand one hundred and ninety only) along with 9% interest per annum from the date of petition. Since the compensation exceeds the amount claimed, he will have to pay additional court fee. The same will be recovered by the Tribunal before disbursing the compensation. We direct the Insurance Company to deposit the amount, less the amount if any already paid, along with 9% interest from the date of petition within three months and on such deposit being made, the claimants can withdraw the amount.

The appeal is accordingly allowed. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.V.ASHA
Judge

rtr/

/true copy/

P.S to Judge