

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE SMT. JUSTICE P.VASHA

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

MACA.No. 1024 of 2008 ()

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AGAINST THE AWARD IN OPMV 538/2006 of M.A.C.T. TIRUR DATED 08-02-2008
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APPELLANT/PETITIONER:

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MOHAMMED ASHRAF,
S/O.KHADER, AGED 39 YEARS, MALIYEKKAL HOUSE
THEYYANGHAL, P.O.PONNANI, MALAPPURAM.**

**BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK**

RESPONDENTS/RESPONDENTS:

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- * 1. V.K.SURESH, S/O.V.V.KUMARAN,
VARAMBATH HOUSE, THOPPUMPADI PO, COCHIN
ERNAKULAM. (DELETED)**
 - * 2. SOJAN, S/O.JOHN,
KALIPARAMBIL HOUSE, KUMBATHULLY P.O., COCHIN
ERNAKULAM. (DELETED)**

*** (RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE APPELLANT VIDE ORDER DT.28.10.2013 IN I.A.No.2813/13 IN
M.A.C.A.No.1024/2008)**

- 3. NEW INDIA ASSURANCE CO.LTD.,
THOPPUMPADY P.O., COCHIN.**

R,R3 BY ADV. SRI.P.JAYASANKAR

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

M.A.C.A.No.1024 OF 2008

Dated this the 17th day of March, 2015

J U D G M E N T

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**Ramachandran Nair, J.**

This appeal is filed by the injured in a motor vehicle accident. He was travelling in a motor cycle bearing Reg. No.KL-10-H-5016 on 7.3.2006. The offending vehicle is a lorry bearing Reg. No.KL-7 AC -8711, which dashed against the motor cycle at Chamravattom junction. He sustained the following injuries:

- “(i) Fracture coccyx and displacement
- (ii) Fracture C2 base & neurological deficit
- (iii) Fracture neck of 5<sup>th</sup> metatarsal bone
- (iv) Sprain neck, subluxation pelvis
- (v) Lacerated wound scalp frontal region and right occipital region
- (vi) Lacerated wound over right foot, little toe area and
- (vii) Pain and tenderness over the neck, over lower neck back.”

He was under treatment for five days as inpatient in a hospital, namely, Westfort Hospital. The total amount awarded by the Tribunal is Rs.40,000/-.

2. Heard both sides.

3. Learned counsel for the appellant submitted that the Tribunal did not grant any amount towards loss of earning and disability eventhough the doctor assessed the disability at 18% as per Ext.A6 certificate. It is also submitted that the compensation awarded under the different heads is too low.

4. Learned counsel for the Insurance Company submitted that it is clear from paragraph 11 of the judgment that the appellant was directed to appear before the Medical Board for assessing permanent disability. But he did not take any steps. Therefore, the Tribunal has drawn adverse inference.

5. The age of the appellant was 37 years at the time of the accident. He claimed that he is a person working as a car driver abroad. As regards the salary claimed, nothing has been produced before the Tribunal to prove the same.

6. The injury sustained appears to be serious which includes fractures. Therefore, he was evidently treated as outpatient also. Therefore, we grant amount at the rate of

Rs.3,000/- as loss of earning for two months (Rs.6000/-) which will be reasonable as he would have earned the same as a driver. Towards bystander's expenses, we grant an amount of Rs.1200/-. As far as pain and suffering is concerned, we enhance the same from Rs.15,000/- to Rs.25,000/-.

7. The doctor who was issued Ext.A6 was noticed the percentage of disability as 3% for malunion of (R) 5<sup>th</sup> MT base; 1% for stiffness (R) focal; 3% for malunited fracture coccyx and 11% for cervical spine fracture. If the petitioner had appeared before the Medical Board, there could have been a proper assessment. Since adverse inference has been taken already for the failure of the appellant to appear before the Medical Board, we are not disturbing the above finding. But at the same time, he will be entitled for more amount towards loss of amenities. Under the said item of claim what was granted by the Tribunal is Rs.3,500/-. We, therefore, award a total amount of Rs.20,000/- towards loss of amenities and loss of enjoyment of life.

8. Accordingly, we recompute the compensation in the following manner.

| <i>Head</i>           | <i>Amount awarded by<br/>the Tribunal</i> | <i>Amount<br/>modified</i> |
|-----------------------|-------------------------------------------|----------------------------|
| Transport to hospital | 2000                                      | 2000                       |
| Damage to clothing    | 500                                       | 500                        |
| Expenses of bystander | 600                                       | 1200                       |
| Medical bills         | 16200                                     | 16200                      |
| Extra nourishment     | 2000                                      | 2000                       |
| Pain and suffering    | 15000                                     | 25000                      |
| Loss of amenities     | 3500                                      | 20000                      |
| Loss of earnings      | -                                         | 6000                       |
| <b>Total</b>          | <b>39800</b>                              | <b>72900</b>               |

**(Rupees Seventy two thousand nine hundred only)**

Therefore, the total compensation will come to Rupees Seventy two thousand nine hundred only. It will carry interest at the rate of 9% per annum for the enhanced compensation. The Insurance Company will deposit the modified amount, less amount, if any, already deposited as per the award impugned, within three months from the date of receipt of a copy of this judgment and we permit the appellant to withdraw the same.

Appeal is allowed accordingly. There will be no order as to costs.

**sd/-**  
**T.R.RAMACHANDRAN NAIR,**  
**JUDGE.**

**sd/-**  
**P.V.ASHA, JUDGE.**