

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 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

MACA.No. 2596 of 2014 ()

AGAINST THE AWARD IN OPMV 1605/2012 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL,KOZHIKODE DATED 6.5.2014

APPELLANT/PETITIONER:

BICHUKOYA K., AGED 57 YEARS,
SON OF KUNHIRAYIN, KALLUMKANDY HOUSE, PULLUMKUNNU
VAIDYRANGADI P.O., RAMANATTUKARA, KOZHIKODE DISTRICT
673 010.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS:

1. JOSHI
SON OF M.MADHAVAN, MALAYIL CHATHANTHODI HOUSE
P.O.PERUMUGHOM, KOZHIKODE - 673 006.

2. BABY, WIFE OF JOSHI,
MALAYIL CHATHANTHODI HOUSE, P.O.PERUMUGHOM
KOZHIKODE - 673 006.

3. ORIENTAL INSURANCE CO LTD.,
DIVISIONAL OFFICE, G.H.ROAD, KOZHIKODE - 673 001.

R3 BY ADV. SMT.REKHA NAIR
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.2596 of 2014

Dated this the 9th day of March 2015

JUDGMENT

Ramachandran Nair, J.,

This appeal is filed by the injured/claimant in an accident which occurred on 15.4.2007 at 5.45 a.m while he was walking along the Ramanattukara-Kondoty Road, when he was hit down by the offending motor cycle. He was immediately taken to the Koya's Hospital, Feroke and then he was referred to Medical College Hospital, Kozhikode. The Tribunal has granted a total compensation of Rs. 63,688/-.

2. He had sustained abrasion on left hand and closed fracture to both bones of left leg. Ext.A2 is the wound certificate. Exts.A4 and A5 are the reference cards issued by the Medical College Hospital, Kozhikode. Exts.A7 & A8 are copies of the case sheet from Medical College Hospital, Kozhikode which have been produced to prove the treatment.

3. Going by the period of treatment it can be seen that in total he was treated as inpatient for a period of 38 days. The First spell was for a period from 15.4.2007 to 20.4.2007 and the 2nd spell was for a period from 24.5.2007 to 24.6.2007.

4. The Medical Board of the District Hospital, Kozhikode has assessed physical disability at 17% and occupational disability at 6%. They have noted the following disabilities.

- 1. Left knee - partial ankylosis 180 to 90° flexion - 5%*
- 2. Right knee - partial ankylosis 160 to 45° flexion - 11%*
- 3. Shortening of right leg by 1 inch - 1%.*

5. Learned counsel for the appellant submitted that being a daily labourer occupational disability will be more. Learned counsel for the Insurance Company submitted that the fixation of compensation by taking the functional disability at 6% is justified.

6. It is also submitted that the monthly income claimed has been adopted by the Tribunal at Rs. 3,000/-.

7. The learned counsel for appellant submitted that for pain and suffering and for loss of amenities more amounts could have been granted.

8. We have considered the rival contentions. In the light of the fact that he was treated as inpatient for a period of 38 days, he was entitled to a sum of Rs. 9500/- towards bystander's expenses at the rate of Rs. 250/- per day. For transport to hospital, we grant another amount of Rs. 1,500/- more and for extra nourishment also we award an amount of Rs.2000/-. The compensation awarded for pain and suffering is Rs. 15,000/-. In the light of the fact that he had sustained serious injuries and was treated as inpatient for a period of 38 days, the appellant will be entitled for more amounts towards pain and suffering. We grant Rs.35,000/- for the same. As far as the loss of future earning power is concerned, the multiplier will be 11 instead of 9. Being a daily labourer, the learned counsel for the appellant vehemently submitted that occupational disability is more than that was reported by the Medical Board. Of course, physical disability is 17% as assessed by the Medical Board. Therefore, the total compensation towards loss of earning power is Rs. 23,760/- instead of Rs. 19,440/- granted by the Tribunal.

9. It is clear that the disability will result in loss of

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enjoyment of life and loss of amenities. The Tribunal has granted Rs. 5,000/- only under this head. We have already discussed the disability sustained by him going by the certificate issued by the medical board. In the light of the above, there will be difficulties for him to pursue normal avocations in life as before. Therefore, we grant an amount of Rs. 35,000/- towards loss of amenities. Accordingly, we recompute the compensation as follows;

Sl. No.	Heads of claim	Amount awarded	Amount modified.
1	Loss of earnings	12000	12000
2	Transport to hospital	500	2000
3	Damage to clothing	500	500
4	Extra nourishment	1000	2000
5	Treatment expenses	4548	4548
6	Bystander's expenses	5700	9500 (38x250)
7	Pain and sufferings	15000	35000
8	Loss of future earning power	19440	23760
9	Loss of amenities	5000	35000
	Total	63688	124308/- (Rounded off to Rs. 1,24,300/-

10. Thus the appellant will be entitled to a total compensation of Rs. 1,24,300/- (Rupees One lakh Twenty Four Thousand Three

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hundred only) which will carry interest at the rate of 9% for the enhanced compensation from the date of petition in the light of the judgment of the apex court in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513],

11. The Insurance Company is directed to deposit the award amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment.

The appeal is allowed. The parties will suffer their costs in this appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge