IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

MACA.No. 2025 of 2010 ( )

AGAINST THE AWARD IN OPMV 508/2008 of MACT PALA

APPELLANT/PETITIONER

K.C.LEVY, S/O CHACKO
KALLIRUKKUMKALAYIL HOUSE, ERAVIMANGALAM KARA
MUTTUCHIRA VILLAGE

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS/RESPONDENTS
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1. JOHN K.J., S/O VARKEY
KALLIRUKKUMALA HOUSE, CHACKERMMUKKU BHAGOM
ERAVIMANGALAM P.O., KOTTAYAM DISTRICT-01(DELETED)

2. JEEMON, S/O.SIMON,
PUTHUSSERY HOUSE, MONIPALLY P.O., UZHAVE -686636

3. THE MANAGER, ICICI LOMBARD,
GENERAL INSURANCE CO.LTD, ROOM NO.FOURTH FLOOR
MUTHOOTTUCROWN PLAZA, T.B.ROAD, KOTTAYAM -01

4. BIBIN, S/O.SUDHAKARAN, THEKKE ARACKAL(H)
KALLARA P.O., VAIKOM-686611

* RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE ORDER DATED 12.3.2015 IN I.A.NO.902/2015

R3 BY ADV. SRI.K.B.RAMANAND
R3 BY ADV. SRI.R.AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.

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M.A.C.A.No.2025 OF 2010

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Dated this the 20th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant who was injured in an accident which occurred on 26/03/2008 at about 3.30 a.m. He was travelling in an autorickshaw bearing Reg.No. KL-5/R 9895 through Ayamkudi - Kaduthuruthy public road. At a place called Adhithyapuram Junction, the autorickshaw got over turned causing injuries to the appellant herein. He claimed a total compensation of ₹ 4 lakhs and the Tribunal has awarded ₹ 1,42,930/-.

2. We heard the learned counsel on both sides. At the outset, the learned counsel for the appellant submits that the the appellant is a traditional fisherman and was earning ₹350/- per day. It is submitted that documentary evidence was adduced to support the appellant's case that he was actually earning ₹350/- per day. Ext.A12 is the passbook issued from the Kerala Fishermen's Welfare Board which was heavily

relied upon by the learned counsel for the appellant. It is also submitted that Ext.A11 certificate issued by the Fisheries Officer, Vaikom will also prove the profession of the appellant as Fisherman. It is submitted that against the claim of ₹ 7,000/- per month, the Tribunal has fixed the monthly income only at ₹4,500/- which is too low. It is also submitted that even though the Doctor has certified 28% permanent disability as per Ext.A8 certificate, the Tribunal has fixed it only at 15% and while calculating the compensation, the monthly income has again been refixed at ₹3,000/-, which is not justified. The learned counsel for the appellant sought for enhancement of compensation under the heads pain and suffering, permanent disability as well as loss of amenities. It is also submitted that for future medical expenses, nothing has been granted by the Tribunal. According to the learned counsel, Ext.A8 will show that an implant was placed in his body which was not removed even on the date of issuance of the certificate.

3. The learned counsel for the Insurance Company submits that the monthly income fixed is reasonable and the amounts granted

under various heads are also adequate.

4. We have considered the rival submissions. The Tribunal on an assessment of the evidence namely Exts.A1 to A5 found that the driver of the offending vehicle was negligent. We are only considering the inadequacy of the compensation. The appellant was admitted in the Medical College Hospital, Kottayam and Ext.A6 wound certificate indicate that he sustained fracture -dislocation L2 vertebra with neurological deficit. He was treated as inpatient for a period of 16 days from 26.3.2008 to 10.4.2008. The Tribunal while considering Ext.A8 disability certificate was of the view that the whole body disability will be 15%. Since the learned counsel for the appellant heavily relied upon Ext.A8, we have gone through the same. It is issued by the Consultant Orthopaedic Surgeon. It is recorded therein that as on the date of examination there is a surgical scar over the lumbar spine. All the movements of lumbar spine are restricted. There is grade III power in all the muscles below knee level. The patient needs a support for walking. X-ray taken shows that the fracture has radiologically united and the implant is in situ.

5. Even though the certificate shows the permanent disability as 28%, as rightly pointed by the learned counsel for the Insurance Company, it is not mentioned therein that the percentage assessed is whole body disability. On a personal examination of the appellant as PW1 and after viewing him, the Tribunal fixed it at 15%. It is well settled that the Tribunal has got the power to assess the occupational disability and arrive at its own conclusion. We do not find that the assessment made by the Tribunal on that score is faulty. Therefore we will adopt the percentage of disability as 15%.

6. As far as the monthly income fixed at ₹4,500/- is concerned, the evidence shows that the appellant is a fisherman by profession and Exts.A11 and A12 will support his case also. After hearing the learned counsel on both sides, we are of the view that the monthly income can be fixed at ₹5,000/-. Accordingly, we proceed to refix the compensation . Even though the Tribunal has adopted the multiplier as 15, going by the decision in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, the correct multiplier will be 14, which we adopt. While assessing the

compensation for permanent disability, the Tribunal has fixed the monthly income at ₹3,000/- which is not a correct method also. Therefore, ₹ 5,000/- itself will have to be adopted for fixing the permanent disability. As far as bystander's expenses are concerned, what is granted is @ ₹100/- per day for 45 days. Herein, the Tribunal has obviously considered the inpatient treatment for 16 days as well as the period for recovering himself from the after effect of the injuries and the treatment and has assessed the amount for a period of 45 days which is only reasonable. We enhance the amount by fixing the amount at ₹200/- per day. As far as compensation for pain and suffering is concerned, what is awarded by the Tribunal is ₹20,000/- which we enhance to ₹30,000/- in the light of the period of treatment and the seriousness of the injuries sustained by him.

7. Loss of earnings for four months granted by the Tribunal @ ₹4,500/- will stand enhanced to ₹20,000/- in total. The compensation for permanent disability will be ₹ 1,26,000/- (5000 x 12 x 14 x 15%) .

8. As far as loss of amenities is concerned, we have noticed that the appellant has difficulty in walking which according to the

learned counsel will affect his avocation in life also. The disability assessed at 15% will justify the claim. Therefore, we enhance the same to ₹25,000/- in total. Towards future medical expenses, he had claimed ₹50,000/- and no amount has been granted. The appellant will have to necessarily undergo another surgery for removing the implant and we award ₹10,000/- for future medical expenses also. The Tribunal has granted interest @ 7.5% per annum which we enhance to 9% in the light of the judgment of the Apex Court in **Supeidei (Smt.) and others v. National Insurance Company Ltd. and another (2009(4) SCC 513)** . We also make it clear that the amount of ₹10,000/- granted towards future medical expenses will not carry any interest.

9. Accordingly, we refix the compensation as shown below :

Head of claim	***Amount Awarded in rupees***
Loss of earnings	20000
Transportation expenses	1230
Extra nourishment	1000
Damage to clothing, etc.	500
Medical expenses	6700
Future treatment	10000
Bystander expense	9000

Head of claim	***Amount Awarded in rupees***
Pain and suffering	30000
Loss/reduction earning capacity	126000
Loss of amenities	25000
Total	229430 (Rupees two lakhs twenty nine thousand four hundred thirty only)

10. The parties will suffer their costs in the appeal. There will be a direction to the Insurance Company to deposit the amount of compensation less the amount already deposited before the Tribunal within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

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