

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 FEBRUARY 2015/20TH MAGHA, 1936

MACA.No. 2052 of 2010 ()

AGAINST THE AWARD IN OPMV 582/2007 ON THE FIEL OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, OTTAPPALAM DATED 22-03-2010

APPELLANT/PETITIONER:

V.C.BABU

S/O.CHAKKU, VADAKKAN HOUSE, PADAVARAD DESOM

OLLUKKARA VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENTS:

1. SIBI, AGED 25 YEARS
S/O.DAVI, CHAKKOLA HOUSE, KIZHAKKUMPATTUKARA P.O.
PLAVALLAPPIL LANE, PERINGAVU VILLAGE
THRISSUR DISTRICT, PIN-680611
(OWNER CUM DRIVER KL 8 W 3656).

2. THE NEW INDIA ASSURANCE COMPANY LTD.,
PERINCHERY BUILDING, ROUND NORTH, THRISSUR-1
(POLICY NO.760301/31/06/01/00016104
VALID FROM 11/2/2007 TO 10/2/2008).

R,R1 BY ADV. SRI.JIJO PAUL

R,R2 BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A.No.2052 of 2010

Dated this the 9th day of February 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor vehicle accident which occurred on 21.4.2007. While he was riding his autorikshaw, bearing Registration No. KL 8 K 5374, a motor cycle bearing registration No. KL-8W 3656 hit him and he sustained serious injuries.

2. He was immediately taken to Aswini Hospital, Thrissur and was admitted there. As per the wound certificate, it is seen that he sustained lacerated wound 2x0.5 cm on the chin, contused abrasion on left elbow, and left forearm, pin over left clavicle, X-ray fracture clavicle.

3. He was discharged on 26.4.2007 with a diagnosis that he was suffering from post traumatic vertigo. Ext.A9 disability certificate assessed his disability at 10%. The disability certificate is issued on 31.12.2008. The appellant was stated to be having

disabilities due to bony swelling on (L) clavicle at the site of fracture, partial ankylosis of (L) shoulder, scapula face, active painless motion to 90° abduction and rotation, full flexion and extensive and hence he was having functional difficulties to hold and carry objects with left upper limb, to raise objects above the head with (L) upper limb, to drive any sort of vehicles due to post traumatic vertigo. The doctor assessed 10% disability to the left shoulder and 8.5% to the whole body as per the Mc Bride Scale. Since the doctor was not examined, the Tribunal has assessed his disability as 2%.

4. The appellant was aged 37 years. Claiming that he was earning a monthly income of Rs. 4,500/- per month, the claim petition was filed seeking compensation to the tune of Rs. 1 lakh. The Tribunal awarded a sum of Rs. 28,770/- along with interest at the rate of 8% p.a. This appeal is filed seeking enhancement of compensation. We heard the learned counsel appearing on either side. The learned counsel for the Insurance Company opposed the claim for enhancement stating that the doctor was not examined. -

5. The appellant is admittedly a driver. The accident

M.A.C.A.No.2052 of 2010 :3:

occurred while he was driving his autorikshaw. The Tribunal has assessed the income only at the rate of Rs. 3,000/- per month. In the judgment of the Apex Court in ***Minu Rout and another V.Satya Pradyumma Mohapatra and others [(2013) ACJ 2544]*** the income of a driver in respect of an accident which occurred in 2004 was assessed at the rate of Rs. 6,000/- per month. In the instant case, the appellant claimed a sum of Rs. 4,500/- only. Therefore, we fix the income at Rs. 4,500/- per month. Since the appellant was aged 37, proper multiplier to be adopted is 15. Since, the appellant was working as a driver and the disabilities have been incurred on his shoulder, we reckon the disability as 10% as certified in Ext.A9 disability certificate. Therefore, the compensation awarded under the head of reduction in earning capacity is recalculated as Rs.4500x12x15x10/100 which will come to Rs. 81,000/-. Similarly, towards loss of earnings, the Tribunal awarded a sum of Rs. 4,500/- for a period of 1½ months. Going by the nature of injuries sustained, we are of the view that the appellant would not have been able to undertake his work at least for a period of

M.A.C.A.No.2052 of 2010 :4:

three months. Therefore, he will be entitled to a sum of Rs. 13,500/- towards loss of earnings. The Tribunal has awarded only an amount of Rs. 2500/- towards loss of amenities. Having regard to the discomfort and inconveniences on account of the injuries sustained to a driver on his shoulder, we award a sum of Rs. 10,000/- for the same. No other head of compensation requires reconsideration. Accordingly, we modify the award as follows:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded (in Rs.)</i>	<i>Amount modified</i>
1	Loss of earning	4500	13500
2	Medical and miscellaneous expenses	3150	3150
3	Bystander expenses	600	600
4	Transportation expenses	500	500
5	Extra nourishment	500	500
6	Damage to clothing	500	500
7	Pain and suffering	5000	5000
8	Loss/reduction in earning capacity	11520	81000 (Rs.4500x12x15x10/100)
9	Loss of amenities & convenience etc.	2500	10000
	Total	28770	114750

Thus the total compensation will come to Rs. 1,14,750/- at the rate of 9% p.a from the date of petition in the light of the

M.A.C.A.No.2052 of 2010 :5:

decision of the Apex Court reported in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513],

8. The Insurance Company is directed to deposit the entire 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 accordingly. No cost.

Sd/-

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

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge