

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

MACA.No. 2703 of 2014 ()

AGAINST THE AWARD IN OPMV 1101/2009 of MACT, IRINJALAKUDA
DATED 12/06/2014

APPELLANT/PETITIONER:

RAJESH
S/O. CHANDRASEKHARAN,
MUKKIL HOUSE, KATTAPPURAM DESOM
MURINGOOR-THEKKUMMURI VILLAGE, KORATTY.P.O.
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENT(S)/RESPONDENTS 1 AND 3:

1. RAJA MOHAMMED.A.
15 QUADIEMILLATH NAGAR, 6TH STREET, MADURAI.P.O.
TAMILNADU-625001.

2. RELIANCE GENERAL INSURANCE CO. LTD.,
10/4/4, TAHA PLAZA, 2ND FLOOR
SOUTH BYPASS ROAD, VANNARAPET, THIRUNELVELI.P.O.
PIN-627001.

R2 BY ADV. SRI.K.B.RAMANAND
R BY SRI.K.B. RAMANAND

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 14-01-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A No.2703 of 2014

Dated this the 14th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant who was injured seriously in a motor vehicle accident is the appellant herein and is aggrieved by the inadequacy of the compensation.

2. The resume of the case is as follows. The accident occurred on 19.04.2009 at about 12.30 p.m, while the appellant was riding a motor cycle bearing Reg.No.KL-08-Y-9774 through Chalakkudy-Angamaly sector. When he reached at Kottamuri junction a motor car, the offending vehicle bearing Reg.No.TN-59-AF-8795 while overtaking the motor vehicle knocked down the motor cycle. The appellant was thrown away and he sustained very serious injuries.

3. The injuries as evident from Exts.A4 and A5 are the following:

Lacerated wound on the scalp (L) parietal region, abrasion on the face and extremities, sub dural hematoma, (L) temporal contusion, sub arachnoid hemorrhage, brain oedema and fracture of ® clavicle. Ext.A6 is the 3 CT scan reports of follow up observation of the brain of the petitioner. Ext.A7 MRI report shows impression of Gliosis in the bilateral frontal, temporal and left parietal lobes. Features represent post head

injury sequelae, focal area of gliosis in the posterior body of corpus callosum, mild dural thickening in the left fronto temporo and parietal lobe, abutting parietal lobe parenchyma.

4. The learned counsel for the appellant submitted that the disabilities noted in Ext.A10 have resulted in impairment of various functions of the appellant. He was aged 31 years at the time of the accident and was a skilled worker namely, Tiles Worker under a contractor PW2. Now he is unable to pursue the said avocation of his life. The permanent whole body disability has been assessed at 40.50% and loss of earning power at 80%.

5. Before the Tribunal, the Doctor was examined as PW1, his employer was examined as PW2 and PW3 is the appellant himself. In para.8 of the award, the Tribunal noted that the appellant was not able to speak, to remember matters or even recollect the memories of the accident suffered. Therefore a finding is entered that such a person cannot do the work of a skilled labourer like tiles laying work. At the most he can do some minor job in home. Accordingly, the Tribunal has assessed the functional disability for granting compensation under the head of loss of earning power.

6. The first aspect is whether the monthly income

assessed is justified. In this context, the learned counsel for the Insurance Company submitted that even going by the evidence of the employer the appellant was not a permanent employee under him and the appellant was being paid for the work done by him. It was also in evidence that the employment was not for the whole period of a month.

7. Being a skilled worker, namely, Tiles Worker, we will have to assess the compensation accepting the fact that he would be earning more than the daily labourers. PW2 through his chief examination stated that he was being paid @ Rs.300/- per day and it was also stated that for the whole month he may not be getting employment. In that view of the matter, by reckoning that he may get work at least for a period of 20-25 days in a month, we will be justified in accepting Rs.6,500/- as the monthly wages. The appellant was travelling in his own Motor Cycle will show that he had been earning good income.

8. As far as the loss of earning power is concerned, 80% disability has been reported by the Doctor which was accepted by the Tribunal also. The learned counsel for the appellant submitted that there will be 100% disability and the appellant

will be able to do only some job in his home which may not earn any wages for him. In this regard we confirm the method adopted to grant compensation by taking the functional disability and loss of earning power as 80%.

9. The Tribunal has fixed the compensation as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Transport to hospital	Rs. 2,500.00
2	Extra nourishment	Rs. 500.00
3	Damage to clothings	Rs. 500.00
4	Medical expenses	Rs.2,39,900.00
5	Bystander's expenses	Rs. 4,800.00
6	Pain and suffering	Rs. 25,000.00
7	Permanent disability	Rs. 25,000.00
8	Loss of earning power	Rs.5,71,200.00
9	Loss of amenities	Rs. 40,000.00
	Total	Rs.9,09,400.00

The multiplier adopted is 17 and going by the decision of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation**, [2010(2) KLT 802], the correct multiplier is 16. Therefore, the compensation for loss of earning power is $\text{Rs.}6,500 \times 12 \times 16 \times 80 / 100 = \text{Rs.}9,98,400/-$. We delete the amount granted towards permanent disability namely Rs.25,000/-. As far

as bystander's expenses is concerned, we grant @ Rs.250/- per day for 30 days which will be Rs.7,500/-. As regards the amount awarded towards pain and suffering, the learned counsel for the appellant submitted that the appellant was treated as an inpatient for a period of 32 days and was continuing his treatment for a period of six months. The other item of head is loss of amenities and loss of enjoyment of life. He was married at the time of the accident. But it is clear that the various disability aspects pointed out and discussed in the award will really affect the avocations in his normal life and he will not be able to carry out normal avocations in his life without the help of anybody. In that view of the matter, we grant Rs.50,000/- for pain and suffering and Rs.75,000/- towards loss of amenities of life and loss of enjoyment of life.

10. It is true that the compensation was claimed at Rs.14,04,000/- which has been limited to Rs.10 lakhs, but in the light of the decision of the Apex Court in **Nagappa v. Gurudayal Singh** [2003(1) KLT 115(S.C)] that the courts can grant compensation after arriving at a just and fair compensation and there is no restriction that the Court/Tribunal cannot award

amount exceeding the claim, we will not be justified in limiting it to Rs.10 lakhs. Nothing has been granted towards loss of earnings and the evidence is that he was an inpatient for 30 days and had continued the treatment for a period of six months and we will have to grant the same @ Rs.6,500/- per mensem and the total amount will be Rs.39,000/-. 11. Accordingly, we refix the compensation as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Transport to hospital	Rs. 2,500.00
2	Extra nourishment	Rs. 500.00
3	Damage to clothings	Rs. 500.00
4	Medical expenses	Rs. 2,39,900.00
5	Bystander's expenses (Rs.250/- X 30)	Rs. 7,500.00
6	Pain and suffering	Rs. 50,000.00
7	Loss of earning (Rs.6500/- X 6)	Rs. 39,000.00
8	Loss of earning power	Rs. 9,98,400.00
9	Loss of amenities and loss of enjoyment of life	Rs. 75,000.00
	Total	Rs.14,13,300.00

(Rupees Fourteen lakhs thirteen thousand
and three hundred only)

12. The appellant will be entitled to a total compensation of Rs.14,13,300/- (Rupees Fourteen lakhs thirteen thousand and three hundred only). This will carry interest @ 9% per annum

from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimant can withdraw the amount, less the amount directed to be kept in Fixed Deposits by the Tribunal.

13. The Court Fee towards the total awarded amount shall be recovered by the Tribunal before disbursement.

The appeal is allowed accordingly. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge