

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 1155 of 2008 ()

AGAINST THE AWARD IN OPMV 1756/2001 of M.A.C.T., THALASSERY DATED
07-09-2007

APPELLANT/PETITIONER

SUGUNA.K.V., AGED 20 YEARS
D/O.SUDHAKARAN, KANNAN VEETIL, KALARIVATHUKKAL
PO.VALAPATTANAM, KANNUR

BY ADV. SRI.M.V.AMARESAN

RESPONDENT/RESPONDENT NO.3

NATIONAL INSURANCE CO.LTD.,
BRANCH OFFICE, HIGH LINE PLAZA, M.G.ROAD
KASARAGOD.

BY ADV. SRI.MATHEWS JACOB (SR.)
ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A.No.1155 OF 2008

Dated this the 6th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant, injured in an accident, is before this Court seeking enhancement of compensation. The accident occurred to her at the age of 13 when when she was a minor and was a student. But the accident has crippled her life and her faculties. She is unable to move about and lead her normal life and will have to depend upon others even for lifting her up from the bed. This is the position under which she approached the Tribunal for adequate compensation by claiming ₹10 lakhs and the Tribunal has granted ₹4,35,600/-.

2. The accident occurred on 15.5.2000 at about 8.45 p.m. at a place Valapattanam. She was proceeding along with her parents to Kalarivathukkal temple. After crossing the NH, when she reached the western side along with the mother the offending vehicle a van bearing Reg.No.KL-7/G 3841 hit down her and she sustained serious injuries.

She was initially treated in the Koyili Hospital, Kannur on the same day and thereafter taken to Unity Health Complex, Mangalore on 17.5.2000. She was discharged on 15.6.2000 with incomplete recovery.

3. We heard the learned counsel for the appellant and the learned Senior Counsel for the Insurance Company.

4. By relying upon the medical certificates, the learned counsel for the appellant submitted that her condition is pathetic as she had become totally a vegetable. She was a brilliant student of Std.VIII in the school. The documents in support of the same have been produced as Exts.A8 and A9 mark list. She was also excelling in other activities which is clear from Exts.A8 to A27 series which include merit certificates, scholarship certificates, Hindi Praveen Certificate etc.

5. It is submitted that the head injury has resulted in the present condition of the appellant which is described as Right Hemiparesis, Dysarthria and Ataxia (Muscular weakness, inability to talk and walk). The disability certificate is issued by the Unity Health

Complex which is produced as Ext.A6. It is submitted that immediately after the date of discharge from the hospital onwards she is continuously under physiotherapy and other forms of treatments are being extended to her. In this context, the learned counsel relied upon the details spoken to by the doctor who was examined as PW4 before the Tribunal. It is submitted that the narration will show that she had lost all her prospects in life and she cannot expect to get any alliance by way of marriage also.

6. It is therefore submitted that the compensation awarded by the Tribunal under the different heads is inadequate. It is also submitted that even though before the Tribunal Ext.A10 series have been produced for medicines purchased and hospital charges to the tune of ₹102,123/-, the Tribunal has awarded ₹61,340/- discarding the amounts covered by various bills for physiotherapy treatment. It is submitted that the appellant had to undergo physiotherapy continuously which fact is not disputed.

7. It is also the contention of the learned counsel for the appellant that considering the fact that she was a brilliant student and

had a bright future, a reasonable amount should have been adopted as the notional income for assessing the disability compensation.

8. The learned Senior Counsel for the Insurance Company submitted that all the above aspects have been considered by the Tribunal for assessing the disability compensation. It is submitted that the Tribunal has arrived at ₹3,000/- as the notional income and had granted the maximum amount under the said head namely ₹2,70,000/-. The Tribunal by deducting 50% going by the disability certificate has awarded ₹2,70,000/- which according to the learned Senior Counsel is justified.

9. We find that the Tribunal has granted compensation in the following manner as evident from paragraph 13:

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Medical expenses	61340
Transportation	4000
Extra nourishment	4000
Bystander expenses	4700
Review	1500
Loss due to disability	270000
Pain and suffering	25000

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of amenities	25000
Loss of marriage prospects	25000
Future treatment	15000
Total	435540 Rounded to 435600

10. The evidence of PW1, the father of the appellant details various aspects including the treatment in the hospital as well as the details of the continuous treatment. According to him, after her initial discharge, she was being treated as outpatient for a period of six months and thereafter it continued in the interval of three months. According to him, treatment continued for a period of two years and thereafter she was being taken to hospital once in six months as outpatient. This is being continued. She is being given physiotherapy treatment with Dr.Sasidharan and for the initial three months she was being taken twice daily for physiotherapy. The place is at a distance of 8 km. from the residential place. She was being taken there in an autorickshaw. After three months, she was being taken to the said physiotherapy centre once in a day which is being continued, for which

also ₹100/- per day is required as expense. She was given speech therapy with Dr.Manoj and homeopathy treatment was also attempted. She was also treated by using walkman. He had also spoken to various aspects regarding her schooling and has stated that she was a brilliant student and had obtained scholarship also. Now she is unable to walk without any help and unable to talk and there is hearing impairment as well as eye sight is also affected. She is their eldest child and she is unable to attend her daily personal needs also. She is unable to attend the school also.

11. The Tribunal has noted as follows :

“ Minor petitioner present before this court today. She can't stand independently without the help of anybody. She cannot speak and can't answer properly to questions.”

12. PW4 is Dr.Udayakumar who is from Unity Health Complex, Mangalore. He has deposed that he had treated the appellant. Even after the discharge she is suffering from semi paralysis right side. She is having 50% permanent disability, whole body disability. She cannot come to a normal life. She will be in the present position

throughout her life. She requires a permanent bystander throughout her life. She cannot manage her own affairs. She cannot study. She cannot do any work. She requires permanent physiotherapy to prevent deterioration of the present position.

13. In the cross examination, he further stated that there is no chance for improvement of the motor function of the patient further. It is also stated that there is no chance for any change of brain and physical impairment cannot be cured gradually by physiotherapy. Finally he replied that there is no possibility for improvement to the patient after 2002.

14. We have gone through the disability certificate which has recorded her state of health at the time of discharge. As on the date of issuance of the disability certificate dated 20.7.2004 it is recorded that “subsequent examination during the follow up revealed gross unsteadiness of gait Right Hemiparesis with brisk reflexes and difficulty in speaking.” It is stated that unsteadiness of gait dysarthria and right sided weakness appear to be of permanent nature and the disability is about 50% of motor function of the whole body.

15. It is evident that she had sustained head injuries which are of serious nature. As regards compensation towards permanent disability, even though the learned counsel for the appellant prayed that this Court may take a higher amount as multiplicand, going by the assessment by the Tribunal at ₹3,000/- per month at the age of 13 of the appellant, we find that the same is reasonable. The multiplier is also 15.

16. The Tribunal has granted only 50% of the total amount quantified by considering the percentage of disability. In the light of the evidence we have discussed already of the doctor coupled with the physical condition of the appellant, it is clear that she will not be able to lead a normal life as all her functions are actually affected. She cannot walk steadily, she cannot talk and there is hearing impairment as well as reduction in the eye sight. She will not be able to attend even her personal needs on her own and will have to depend on others. Therefore as far as the physical condition of the appellant is concerned, we will be justified in assessing the disability as 100%.

17. The learned Senior Counsel for the Insurance Company

submits that 50% of the disability alone is covered by the disability certificate. But even to the repeated suggestions in cross examination, PW4 stated that there is no scope for any improvement. In that view of the matter and in the light of the situation of the patient physically as well as neurologically, we will be justified in granting ₹540,000/- for the disability sustained. For medical expenses, ₹61,340/- has been granted. The evidence show that she requires continuous physiotherapy. Even though the bills towards such expenses have not been accepted by the Tribunal, according to us, a reasonable amount should have been granted for physiotherapy and the expenses incurred as claimed. The bills produced show that the amount is quantified from time to time and the total amount will be nearly ₹50,000/- going by paragraph 12 of the award. Even on a reasonable estimate, we will be justified in granting a further amount of ₹35,000/- towards the charges for physiotherapy incurred already i.e. upto the date of giving evidence. She was being treated in the hospital at Mangalore and had to attend review from time to time, initially on a regular basis and later once in six months. Therefore for transportation,

we grant an amount of ₹10,000/-. As far as bystander expenses is concerned, the Tribunal has granted ₹7,500/-, during the period she was treated as an inpatient. As far as extra nourishment is concerned, ₹4,000/- is granted by the Tribunal. We grant a further amount of ₹6,000/- to make it ₹10,000/-.

18. The next item is pain and suffering. The Tribunal has granted ₹25,000/- under this head. The details show that she had sustained very serious injuries and has to continue treatment for a long time to come ie. throughout her life. We will be justified in granting ₹1,00,000/- towards pain and suffering.

19. The next two items are loss of amenities and loss of marriage prospects. As far as loss of amenities in life and other related aspects are concerned, we will have to consider the denial of various pleasures of life including the schooling of the victim. She was a brilliant student going by the certificates Exts.A8 and A9 produced by the appellant. She had obtained scholarship also. Now as a result of the accident, she is unable to pursue her education and lead a normal life, unable to get up, walk, talk or indulge in any fruitful activities.

The same will show that she is leading a life of a vegetable which will continue throughout her life. We consider it proper to grant an amount of ₹ 1,50,000/- towards loss of amenities and enjoyment of life. As far as loss of prospects of marriage also, since there is no chance of improvement in her condition, she will not be able to lead a marital life for which we grant an amount of ₹1,00,000/-. As far as future treatment is concerned, it is clear that she has to continue the physiotherapy treatment. This alone will give her some support atleast to lift herself from the bed. Apart from the same, she requires the assistance of a bystander also. Since physiotherapy treatment will have to be continued throughout the life, we grant an amount of ₹2 lakhs towards future treatment and another sum of ₹2,00,000/- towards the expenses of bystander.

20. As regards the interest granted, we find that the Tribunal has granted interest @ 7% per annum. We grant interest @ 9% per annum for the enhanced amount of compensation. Accordingly, the appellant will be entitled for compensation as follows :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Medical expenses	96340
Transportation	10000
Extra nourishment	10000
Bystander expenses:	
1. during the treatment	7500
2. continuously	200000
Review	1500
Loss due to disability	540000
Pain and suffering	100000
Loss of amenities	150000
Loss of marriage prospects	100000
Future treatment	200000
Total	1415340 (Rupees fourteen lakhs fifteen thousand three hundred forty only)

21. We also direct that the Insurance Company will deposit the amount of compensation along with interest within a period of three months and the appellant will be allowed to withdraw 50% of the amount. The remaining 50% will be deposited in a nationalized bank for a period of five years and the interest portion can be withdrawn for meeting the treatment expenses and if any variation is required with the

above condition, we permit the appellant to move the Tribunal itself.

22. If any amount is payable as court fee for the amount granted by this Court, we direct the appellant to pay the same and the Tribunal is permitted to recover the same from the amount deposited by the Insurance Company.

The appeal is accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

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