

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

MACA.No. 2531 of 2009 ()

AGAINST THE AWARD IN OPMV 38/2003 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, ALAPPUZHA DATED 18.4.2009

APPELLANT/PETITIONER:

ABDUL RASHEED, S/O.ABDUL RAZAK,
PUTHENPARAMBIL HOUSE, PUNNAPRA SOUTH, PUNNAPRA P.O.
ALAPPUZHA 4.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENTS/RESPONDENTS:

1. JABBAR ABDUL RAHMAN, S/O.ABDUL RAHMAN,
PAKKAVALAP, PUNNAPRA P.O., ALAPPUZHA-4.

2. SATHARA K.M., S/O.MOHAMMED KUNJU,
PUNNELIL VEEDU, PUNNAPRA P.O., ALAPPUZHA-4.

3. THE ORIENTAL INSURANCE COMPANY LTD.
REPRESENTED BY THE DIVISIONAL MANAGER
DIVISIONAL OFFICE, MARTHOMA BUILDING, THIRUVALLA.

4. BENNY K.P., S/O.PAULOSE,
KACHAPPALLY HOUSE, PARAKKADAVU, ERNAKULAM.

5. SUJAMOLE SCARIA, D/O.SCARIA,
THULOCHIRAYIL HOUSE, MARADU,
ERNAKULAM.

-* (STRUCK OFF AND DELETED)

6. THE NATIONAL INSURANCE COMPANY LTD.
REPRESENTED BY ITS DIVISIONAL MANAGER, PALARIVATTOM.

(RESPONDENT No.5 IS STRUCK OFF AND DELETED FROM THE PARTY ARRAY
AT THE RISK OF THE APPELLANT AS PER THE ORDER DATED 6.3.2015 IN I.A.
No. 885/2015 in M.A.C.A.2531/2009)

R,R4 BY ADV. SRI.C.A.CHACKO
R,R4 BY ADV. SRI.N.A.SHAFAEEK
R,R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R,R3 BY ADV. SRI.P.JACOB MATHEW
R,R6 BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.2531 of 2009

Dated this the 12th day of March 2015

JUDGMENT

Asha, J.,

The appellant met with an accident on 7.9.2002 at 2.15 a.m on the Kollam-Alappuzha National Highway. A mini lorry bearing registration No. KL 04/F 3654 in which the appellant was travelling, collided with another mini lorry bearing registration No. KRA 2209 which came in the opposite direction causing very serious injuries to the appellant. He was immediately taken to the Taluk Hospital, Karunagappally. From there, he was taken to Alappuzha Medical College and from there to Medical Trust Hospital, Ernakulam. After prolonged treatment, he filed claim petition seeking compensation to the tune of Rs. 12 lakhs which was subsequently reduced to Rs. 10 lakh. The Tribunal awarded a sum of Rs.3,62,500/-. This appeal is filed seeking enhancement of compensation alleging that the amount awarded under various heads are thoroughly inadequate. It was

M.A.C.A. No.2531 of 2009 :2:

pointed out that the amount towards permanent disability is not fixed properly.

2. Heard both sides. Learned counsel for the Insurance Company opposed the enhancement.

3. Ext.A4 wound certificate shows that the appellant sustained the following injuries.

- i) Fracture lower end of (R) tibia.
- ii) Crush injury right foot.
- iii) Fracture left foot bones + crush injury left foot.
- iv) contusion right side of forehead.

4. It is seen that the appellant was admitted in the Medical College Hospital, Alappuzha. From there, he was taken to Medical Trust Hospital, Ernakulam. There he underwent treatment as an inpatient for a period of 77 days from 7.9.2002 till 14.11.2002.

5. The details of injuries and treatment undergone by him are explained as follows:

- i) Heel avulsion (L) foot with dislocation of medial cuneiform.
- ii) Dorsal skin flap avulsion right foot with fracture of 1st and

M.A.C.A. No.2531 of 2009 :3:

2nd metatarsal and all proximal phalanges right foot.

iii) Closed fracture both bones of right leg and

iv) Fracture acetabulum with pubic rami (R) . K wire fixation for foot and nailing of right tibia was done on 7.9.2002. Para scapular free flap (right foot and free flap (foot) were done on 9.9.2002 under general anaesthesia. Secondary skin grafting of both foot were done on 14.9.2002 and again on 5.10.2002.

6. The implant was removed on 16.6.2005. Subsequently, on several occasions flap thinning was done. Thereafter, the petitioner was treated jointly by orthosurgeon and plastic surgeon. During the course of treatment, amputation of 4th toe of his right foot and left sole was done. On account of the injuries, he has unstable scars on both feet. He developed swelling of foot on walking. It is seen from the treatment summary that the left heel is prone to get ulcerated because of loss of heel pad tissue and absence of sensation. The disability was assessed by the Medical Board, Alappuzha and thereafter by the Medical Board, Kottayam, as per Exts.X1 & X2 certificates which assessed the disability as 10%. The Tribunal assessed the

disability as 15% after considering the above. The treatment under various hospitals are covered by medical bills, towards which the Tribunal awarded a sum of Rs. 1,85,000/-.

7. The Tribunal has awarded a sum of Rs.7,500/- towards transportation. It is seen that the appellant had undertaken several visits to several hospitals since the date of accident and it continued even in the year 2005. Therefore, we award a sum of Rs. 10,000/- towards transportation. The Tribunal has awarded a sum of Rs. 2,000/- towards extra nourishment. In view of the prolonged treatment he had to undergo, we award an amount of Rs. 4,000/- for extra nourishment. It is seen that he underwent inpatient treatment for a period of 77 days. The Tribunal has awarded only an amount of Rs. 5,000/- towards bystander's expenses. We award a sum of Rs.15,400/- towards bystander's expenses at the rate of Rs. 200/- per day.

8. A sum of Rs. 2,000/- alone is taken as the monthly income by the Tribunal. The certificate Ext A12 shows that the appellant was working as a Purchase Manager cum Commission agent at a monthly salary of Rs. 4,500/- and in addition to that he was

getting other emoluments also. The Tribunal has not accepted the salary certificate. Reckoning the wage structure prevailing at the relevant time, we fix the monthly income of the claimant at Rs.4,000/-. Thus the compensation under the head loss of earning for 6 months will be Rs. 24,000/-. The Tribunal has awarded a sum of Rs. 25,000/- towards physical disability. But the multiplier adopted by the Tribunal is not correct. The appellant was aged 42 at the time of the accident. Then the correct multiplier will be 14. The monthly income is fixed at Rs. 4,000/-. Thus he will be entitled to a sum of Rs. 1,00,800/- (Rs. $4,000 \times 12 \times 14 \times 15 / 100$). The Tribunal has awarded a sum of Rs. 50,000/- for pain and suffering. In view of the fact that the appellant had undergone prolonged treatment and various procedures of treatment in various hospitals and the difficulties he had to suffer on account of the injuries, we enhance the same to Rs. 60,000/-. On account of the disability incurred, the appellant may not be able to enjoy the normal amenities in life forever, as he was enjoying before the accident. Considering the gravity of the disability, we award a sum of Rs. 60,000/- towards

M.A.C.A. No.2531 of 2009 :6:

loss of amenities. Due to the injuries, there is disfigurement also, as evident from the disability certificate. Therefore, we award a sum of Rs. 25000/- towards disfigurement. The award passed by the tribunal is accordingly, modified.

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Amount modified</i>
1	Transportation	7500	10000
2	Damage to clothing	500	500
3	Extra nourishment	2500	4000
4	Bystander's expenses	5000	15400
5	Treatment expenses	185000	185000
6	Loss of earnings	12000	24000
7	Pain and suffering	50000	60000
8	Loss of amenities in life and enjoyment	50000	60000
9	For physical disability	25000	100800
10	For amputation of 4 th toe	25000	
11	Disfigurement		25000
	Total	3,62,500	484700

9. Thus he will be entitled to a total compensation of Rs.4,84,700/- . The enhanced compensation will carry interest at the rate of 9% p.a from the date of petition in the light of the decision of the apex court in **Supe Dei(Smt.) & Ors. v.**

M.A.C.A. No.2531 of 2009 :7:

National Insurance Co. Ltd. and Anr. [(2009)4 SCC 513].

10. It is made clear that the Insurance company will be entitled to recover the amount from the respondent No.1 , as found by the Tribunal.

11. 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. The parties will suffer their costs in this appeal.

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

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

AL/-

M.A.C.A. No.2531 of 2009 :8:

double corrected