IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

MACA.No. 2561 of 2009 (B)

AGAINST THE AWARD IN OPMV 918/2005 of M.A.C.T, TIRUR DATED 04-04-2009

APPELLANT/3RD RESPONDENT:

ORIENTAL INSURANCE CO.LTD
CHENNAI, REPRESENTED BY ITS ASSISTANT MANAGER
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADVS.SRI.GEORGE CHERIAN (THIRUVALLA)
SMT.LATHA SUSAN CHERIAN
SRI.ALEXY AUGUSTINE
SMT.K.S.SANTHI

RESPONDENT/CLAIMANT:

UMMER,
S/O.KUNHIMOHAMMED,
THONIKKADAVATH HOUSE,
P.O.KUTTIPURAM, TIRUR TALUK
MALAPPURAM DISTRICT.

R, BY ADV. SRI.A.KRISHNAN
R, BY ADV. SMT.DEEPA.H.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28-04-2015, ALONG WITH CO. 69/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A No.2561 of 2009 and

Cross Objection No.69 of 2010

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Dated this the 28th day of April, 2015

JUDGMENT

Asha, J.

Insurance Company has filed this appeal against the quantum of compensation awarded by the Tribunal.

2. The claimant met with an accident on 23.06.2005 while he was riding his motorcycle on collision with a bus on the backside of the motorcycle. The claimant sustained severe injuries. The claim petition was filed seeking compensation of Rs.15 lakhs. The Tribunal awarded a sum of Rs.5,57,930/-. According to the Insurance Company, the compensation awarded towards pain and suffering, loss of marriage prospects as well as towards disability are excessive. It is also their grievance that the income reckoned by the Tribunal in respect of the claimant is excessive.

3. We heard the learned Senior Counsel appearing for the Insurance Company as well as the learned counsel appearing

for the claimant.

4. The injured was aged 19 years at the time of the accident. It was claimed that he was a coolie earning monthly income of Rs.4,500/-. He sustained severe head injury, brain stem injury, diffuse brain injury, left facial palsy bilateral foot drops and comminuted fracture right fibula. He underwent treatment in Moulana Hospital, Perinthalmanna. For the first spell of 20 days he remained unconscious. He underwent inpatient treatment for a period of 76 days. After discharge from the hospital on 7.9.05, he had to undertake several visits to the hospital, which the Tribunal found as more than 20 times.

5. The Tribunal found that the injured is entitled to a sum of Rs.1 lakh towards pain and suffering taking note of the fact that he remained unconscious for a period of 20 days and continued to suffer from the injuries even after that. As it was claimed that he was working as a coolie and earning Rs.4,500/- per mensem, the Tribunal thought it fit to fix the income @ Rs.3,000/- and adopting the multiplier of 16, awarded a sum of Rs.1,15,200/- taking his disability as 20%, based on Ext.C1.

6. But we find that the proper multiplier in the case of a

person aged 19 years is 18, going by the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** [2010 (2) KLT 802].

7. As far as the income reckoned by the Tribunal is concerned, it cannot be said that the income fixed by the Tribunal @ Rs.3,000/- is unreasonable. In the judgment of the Apex Court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.** [2011(13) SCC 236] as well as in **Syed Sadiq v. Divisional Manager** [AIR 2014 SC 1052], the monthly income in the case of a coolie was reckoned as Rs.4,500/- in respect of an accident which occurred in the year 2004. Therefore the compensation arrived at by the Tribunal reckoning the income @ Rs.3,000/- cannot be said to be excessive. At the same time, it has to be calculated adopting the proper multiplier of 18.

8. The next complaint of the Insurance Company is regarding the compensation of Rs.1 lakh awarded towards pain and suffering. The appellant was admitted in the Maulana Hospital, Perinthalmanna immediately after the accident. As per the records relating to the treatment, it is seen that he had

subarachnoid haemorrhage, cerebellar haemorrhage and brain edima. He was put in the Neurosurgery intensive care unit under ventilation for 8 days. Thereafter he underwent Tracheotomy on 1.7.05 and it was removed on 24.07.05. He developed ® sided pneurothorax for the ICD done. For 20 days, he remained unconscious. He had a few episode of seizures, fracture lower 3rd of right fibula. From 23.06.05 to 7.9.05 he underwent inpatient treatment undertaking different courses of treatment. The District Medical Board, when it examined the injured on 11.06.08, found that he had complaints of deviation of angle of mouth to right, difficulty on walking, recurrent episodes of seizures and impaired memory, seventh nerve (facial nerve) palsy (left) plus minimal foot drop (Rt). His locomotor disability was assessed as 17%, whereas neurological disability was found as 3%. The permanent partial disability of the injured was found as 20% as per Ext.C1. The medical expenses itself came to Rs.1,22,323.97. The Tribunal found that the injured was having disorientation of memory, deviation of angle of mouth, recurrent episodes of seizure etc, on account of the accident. The accident occurred when the appellant was aged only 19 years. It was found that he required future treatment and he was found to be unable to carry out any work for another period of 3 months following the 76 days of treatment, for which the Tribunal awarded a sum of Rs.26,400/- towards loss of earnings. It was also found that he was unable to attend his needs except with the help of a bystander. Having regard to the nature of the injuries and the agonies undergone by the injured, we are of the view that a sum of Rs.75,000/- would be reasonable towards pain and suffering. The next contention of the Insurance Company is with regard to the compensation of Rs.1,50,000/- awarded towards loss of marriage prospects. It is seen that no oral evidence was adduced before the Tribunal and it is also not stated as to whether the Tribunal had any occasion to observe the condition of the injured. As per Ext.C1 disability certificate, the findings are to the effect that the injured has incurred deviation of angle of mouth towards right, difficulty in walking and he has recurrent episodes of seizures and impaired memory. Apart from that he has incurred seventh nerve (facial nerve palsy) and minimal foot drops ®. It is further found on psychological examination that he is having mild depression and neurological disability is assessed at 3%. It is seen that Ext.C1 report of the District Medical Board was the only document which was available before the Tribunal, apart from the discharge certificates and medical bills, in order to show the condition of the injured as per Ext.C1 issued on the basis of the examination conducted on 11.06.2008. From Ext.C1 it is not clear as to whether the disabilities incurred by him are so severe to cause diminution of marriage prospects to such a great extent, so as to award compensation of Rs.1,50,000/-. It is true that the injured has incurred disfiguration and he is having disfiguration of his face, lower limp in addition to impaired memory. In view of these circumstances, we are of the view that a sum of Rs.60,000/- will be reasonable towards diminution of marriage prospects.

9. The injured/claimant has filed Cross Objection No.69 of 2010 seeking enhancement of compensation while objecting the appeal preferred by the Insurance Company against the quantum of compensation awarded on various heads. In the Cross Objection, the complaint of the injured is that the amount claimed by him in the claim petition, ie. Rs.15 lakhs, was denied

without properly evaluating the circumstances. It is pointed out that he had to spend huge amount towards treatment and he is compelled to continue on treatment, for which separate compensation was liable to be awarded towards future treatment.

10. But we find that the injured was a coolie and his claim was for a sum of Rs.4,500/- as his monthly income. The Tribunal has reckoned his income only @ Rs.3,000/-. As per the decisions reported in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.** (supra) as well as in **Syed Sadiq v. Divisional Manager** (supra), a sum of Rs.4,500/- was taken as the monthly income of a coolie in respect of an accident occurred in 2004. Therefore we are of the view that the income of the appellant can be taken as Rs.3,500/- in this case. Therefore the compensation towards permanent disability will come to Rs.3500X12X20/100X18 = Rs.1,51,200/-.

11. It is found that the Tribunal has not awarded any amount towards loss of amenities, despite the fact that he had incurred disfiguration and disability to the tune of 20%. On account of the disabilities incurred he will not be in a position to

enjoy the amenities of life as in the case of others and he lost expectation of life at an early age of 19 on account of the accident. Therefore he has to be compensated towards loss of amenities of life and loss of enjoyment and expectation of life, and according to us, a sum of Rs.75,000/- would be reasonable under this head. Similarly no amount is awarded towards disfiguration even though it is evident from Ext.C1 that the accident has resulted in deviation of the angle of his mouth towards right and he has incurred minimal foot drops ® on account of which he is having difficulty in walking. With these disfiguration he has to suffer throughout his life. Therefore he will be entitled to a sum of Rs.50,000/- under the head `disfiguration'.

12. We have already found that the Tribunal, while awarding compensation under the head `loss of prospects of marriage and married life and future treatment' as Rs.1,50,000/-, did not award any amount towards loss of amenities, enjoyment and expectation of life, or towards disfiguration. Similarly the compensation is not separately awarded towards future treatment. As it is found that the injured was liable to be

compensated towards future treatment, we award a sum of Rs.25,000/- towards future treatment separately.

13. The award passed by the Tribunal is accordingly modified as follows:

Sl.No.	*Head of claim*	*Amt.*
1	Transport to hospital	Rs. 10,000.00
2	Extra nourishments	Rs. 20,000.00
3	Damage to clothing and articles	Rs. 2,000.00
4	Medical bills	Rs. 1,22,324.00
5	Bystander's expenses	Rs. 26,400.00
6	Pain and suffering	Rs. 75,000.00
7	Compensation for loss of prospects of marriage and married life	Rs. 60,000.00
8	Future treatment	Rs. 25,000.00
9	Compensation for loss of earnings	Rs. 14,000.00
10	Loss of amenities, enjoyment and expectation of life	Rs. 75,000.00
11	Disfiguration	Rs. 50,000.00
12	Compensation for permanent disability	Rs. 1,51,200.00
	TOTAL	Rs. 6,30,924.00

(Rupees Six lakhs thirty thousand nine hundred and twenty four only)

The appeal is accordingly dismissed as above and the Cross Objection is allowed enhancing the compensation to a total amount of Rs.6,30,924/- (Rupees Six lakhs thirty thousand nine hundred and twenty four only and the cross objector/injured will be entitled to the amount and the enhanced amount will carry interest @ 9% per annum from the date of petition.

The parties will bear their costs in this appeal.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge
Sd/-
P.V.ASHA
Judge

rtr/

/true copy/

P.S to Judge