

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

MACA.No. 2569 of 2009 ()

**AGAINST THE AWARD IN OP(MV) 384/2005 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, THRISSUR DATED 18-05-2009
APPELLANT/2ND RESPONDENT:**

**UNITED INDIA INSURANCE COMPANY LIMITED,
THALASSERY NOW REPRESENTED BY ITS DEPUTY MANAGER
REGIONAL OFFICE, "SHARANYA", HOSPITAL ROAD
KOCHI-11.**

**BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW**

RESPONDENT/PETITIONER:

**ABDUL GAFOOR, S/O.KADER,
KUTTIKARIPPOTT HOUSE, PUNAYUR VILLAGE, CHAVAKKAD TALUK
THRISSUR DISTRICT.**

BY ADV. SRI.K.I.SAGEER

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
07-08-2015, ALONG WITH MACA. 2462/2010 & CONNECTED CASES, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

shg/sd

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.Nos.2569/2009 and 2462, 2669, 2670 & 2672 of 2010

Dated this the 7th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

M.A.C.A.Nos.2462, 2669, 2670 & 2672 of 2010 are filed by the claimants and MACA No.2569/2009 is filed by the Insurance Company against the award in O.P.(M.V.) No.384/2005. Therein the appeal filed by the claimant is MACA 2669/2010.

2. We heard learned Senior Counsel for the Insurance Company Sri. Mathews Jacob and Sri. K.I. Sageer, learned counsel for the claimants.

3. As far as MACA No.2569/2009 is concerned, it is submitted by the learned Senior Counsel for the appellant that the Tribunal has granted Rs. 2 lakhs for expenses for future treatment, which cannot be justified. It is submitted that the claimant had suffered pelvis fracture to both hips and Rs.2 lakhs is provided for replacement of hip in future after 20 years and it is also submitted that the Tribunal

further granted interest from the date of filing of the petition for the said amount, which is not justified. The claimant therein was travelling in a car along with certain others and the accident occurred when the car was hit by a lorry. It occurred on 29.12.2000 at about 8 p.m. The accident occurred near Feroke Check Post and the offending vehicle is a lorry bearing registration No.KL13/C 1236. The driver of the car who was the owner of the car also died in the accident and his legal representatives had filed O.P.1813/2002.

4. Learned counsel for the claimants submitted that the finding by the Tribunal that the deceased driver of the car had also contributed to the negligence is not correct.

5. On this question, we heard the learned Senior Counsel for the Insurance Company and learned counsel for the claimants.

6. Of course PW1 and PW2 have been examined in support of the case of the claimants that the car driver was not negligent. The argument of Sri. Sageer is that even

though the scene mahazar will show that the car was lying on the other side of the road, actually after the hit by the lorry it was pulled to that place. The Tribunal referred to the evidence of PW2 and his version in cross examination whereby he admitted that the car was hit by the lorry on the northern border of the road. The road is lying east – west and the car was proceeding from east to west. The scene mahazar showed that the width of the road is 14 mtrs. and the accident took place 3.60 mtrs. towards south from northern tar end. Thus the Tribunal concluded that the car was thoroughly on the wrong side of the road.

7. According to us, the oral evidence given by PWs 1 & 2 cannot fully establish that the driver of the lorry alone was negligent. Therefore, no interference is called for on the finding that both the drivers have contributed to the accident and the contribution of negligence as fixed at 50:50, cannot be said to be wrong.

8. As far as the quantum of compensation in MACA 2669/10 is concerned, it is seen that the appellant/claimant

had sustained the following injuries:

“pelvis fracture both hips, fracture right femur anterior portion posterior dislocation of right hip, fracture shaft of femur, anterior dislocation of left hip, left eye lash peeled off, nasal bone fracture, 5 teeth lost, cut injury lower lip, metacarpal fracture left ring finger”.

He was treated in Medical College Hospital, Calicut and in another hospital in Chennai for a period of more than one month. He sustained anterior dislocation left hip, fracture femur right, lacerations forehead, broken tooth and other injuries. The medical expenses granted are to the tune of Rs.3,10,300/- based on Ext.A22 series of medical bills. Even though 30% disability was assessed as per Ext.A21, the Tribunal was of the view that the same cannot be accepted since implant was placed in his body at the time of assessing the disability.

9. According to us, a reasonable amount ought have been granted towards permanent disability. It was claimed that he was a cook working in Malasia. But no evidence was there. Therefore the Tribunal has arrived at the monthly income as Rs.3,000/-, which we re-fix at Rs.4,000/-

for the purpose of assessing the compensation. For permanent disability, we take 20% as the functional disability because his both the hips have been affected.

10. As far as the amount granted towards future treatment is considered, it is claimed that he will have to undergo future treatment for hip problems including a surgery wherein the implant placed. But Rs.2 lakhs already granted is on much higher side and we fix it at Rs.1 lakh. Since the claimant is entitled for compensation towards permanent disability by applying the multiplier 16 and by taking 20% as the disability the amount will be Rs.1,53,600/-.

11. One of the aspects pointed out by the learned Senior Counsel Sri. Mathews Jacob is that after granting Rs.15,000/- towards loss of amenities, the Tribunal has granted Rs.50,000/- towards compensation for discomfiture. Evidently a person who had sustained permanent disability is entitled for amount of compensation for loss of amenities. Therefore, the same should have been rolled into one head

and appropriate amount should have been granted to the claimant. After considering various aspects, we fix an amount of Rs.50,000/- towards loss of amenities, and for pain and suffering, in the light of the fact that he was treated in two different hospitals and had to undergo various medical treatments including surgery, we fix an amount of Rs.35,000/-. Therefore, we re-compute the compensation in the following manner:

Head of Claim	Amount re-fixed in Rs.
Loss of earning	40000
Expense for transportation	5000
Expense for extra nourishment	5000
Damage to clothing	500
Expense for treatment	310300
Expense for bystander	5000
Compensation for pain and suffering	35000
Compensation for loss of amenities	50000
Disability	4000x12x16x20/100 153600
Expense for future treatment	100000
Total	7,04,400 (Rupees seven lakhs four thousand four hundred only)

12. The appeals MA.C.A.Nos.2569/2009 and 2669/2010 are disposed of accordingly.

13. But as regards the liability of the Insurance Company, the learned counsel for the claimant submitted that even though the insurer of the car was not impleaded in the party array being a joint tortfeasor, the owner of the lorry and the insurer will be liable. The said principle is evident from the provisions of the Kerala Torts (Miscellaneous Provisions) Act, 1976. Therefore, we hold that the Insurance Company herein namely the appellant in M.A.C.A.No.2569/2009 is liable to satisfy the entire award.

14. As far as MACA Nos.2462, 2670 and 2672 of 2010 are concerned, the main grievance is regarding the finding on the cause of accident and the apportionment at 50:50 of negligence. In the light of the view we have taken, same will be applicable as far as these appeals are concerned. The claimants can seek compensation as against any of the tortfeasors and therefore herein also the Insurance Company namely second respondent will be liable to satisfy

the entire amount awarded. Accordingly, the awards in those cases namely O.P.(M.V.) Nos.1812/2002, 659/2003 and 383/2005 are modified and we hold that the Insurance Company namely the 2nd respondent in these appeals will be liable to satisfy the award.

15. The Tribunal has granted 7% interest from the date of petition. The learned Senior Counsel for the Insurance Company submitted that already the amounts have been deposited before the Tribunal as regards 50% liability. Therefore, as far as the remaining 50% of the liability, the Company will deposit the amount along with 9% interest from the date of filing of the petition till the date of deposit.

16. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellants will be entitled for the release of the amount.

All these appeals are accordingly disposed of.

There will be no order as to costs in the appeals.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/