

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 MARCH 2015/15TH PHALGUNA, 1936

MACA.No. 2857 of 2014 ()

**(AGAINST THE AWARD IN OP(MV).NO. 611/2011 OF MOTOR ACCIDENT CLAIMS
TRIBUNAL, PALA DATED 06-01-2014)**

APPELLANT/PETITIONER:

**M.K.SHYNAN,
S/O.KUTAPPAN, AGED 45 YEARS,
MACHUKUZHAYIL HOUSE, MUTHOLAPURAM.P.O.,
JOSEGIRI BHAGOM, ELANJI VILLAGE, MUVATTUPUZHA,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.CYRIAC KURIAN
SRI.BABY THOMAS
SMT.BINITHA JAMES**

RESPONDENT(S)/RESPONDENTS:

- 1. VIJAYAN,S/O GOVINDAN,
VALIPLACKAL HOUSE, KOODAPULAM.P.O.,
PALA-686 576.**
- 2. THE NEW INDIA ASSURANCE CO. LTD,
REP. BY ITS DIVISIONAL MANAGER,
KOTTAYAM-686 001.**

**R1 BY ADV. SRI.K.RAVI (PARIYARATH)
R2 BY ADV. SRI.M.PREMCHAND
BY SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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

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M.A.C.A.No.2857 of 2014

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Dated this the 6th day of March, 2015

JUDGMENT

Asha, J.

The appellant met with an accident on 22.05.2011. While he was riding a Honda Activa Scooter, he was hit by another motor cycle ridden by the 1st respondent. The appellant sustained very serious injuries and was immediately taken to the hospital. He sustained disability of 15% as certified in Ext.A12.

2. Claim petition was filed before the Tribunal seeking compensation to the tune of ₹3,38,000/- which was limited to ₹3,00,000/-. The Tribunal awarded a sum of ₹2,13,900/-.

3. The learned counsel for the appellant submitted that compensation awarded by the Tribunal is meager and requires enhancement. We heard the learned Counsel for the Insurance Company also, who opposed the claim for enhancement.

4. The learned counsel for the appellant submits that the

compensation awarded by the Tribunal is only ₹2,13,900/- which is meager amount. Similarly, despite the fact that disability was assessed as 15%, the tribunal reduced the disability of the appellant to 6%, without any reason. In the accident, the appellant sustained Contused abrasion right knee. Crack fracture lateral condyle tibia on right side. Immediately after the accident he was admitted in the Chazikattu Hospital and was discharged on 31.05.2011. Further, as per Ext.A11 discharge summary, it is seen that, he underwent inpatient treatment in Holy Family Hospital, Muthalakodam from 02.04.2013 to 15.04.2013. The disability assessed by the Doctor as per Ext.A12 disability certificate is 15%. The tribunal found that the injuries sustained by the petitioner was to the tibial condyle. After observing the same, the disability was taken as 6% and the compensation was fixed accordingly. There is no reason seen stated in reducing the disability for the purpose of compensation.

5. The appellant is a toddy taper. Injury on his tibia condyle has affected his avocation and earning capacity. In the absence of any evidence to the contrary, so as to reduce the

percentage of disability, the Tribunal has assessed the disability at 6%. We are of the opinion that the appellant should have been granted compensation towards permanent disability which is assessed as 15%, especially in view of the fact that the appellant has been working as a toddy taper.

6. The learned counsel for the appellant submitted that the income reckoned for the purpose of compensation is only ₹7500/-. We find that the Tribunal has reckoned the average annual income for the year 2009-2010, 2010-2011 etc. on the basis of the documents produced by the appellant. Therefore, there is no reason for modifying the monthly income already assessed by the Tribunal.

7. The appellant underwent treatment as inpatient for a period of 19 days, compensation for bystander's expenses was awarded to the tune of ₹3,800/-. We enhance it at the rate of ₹300 per day which will come to ₹5,700/-. Reckoning the percentage of disability as 15% , compensation under the head of permanent disability is re-fixed as **₹1,89,000/-** (7500x12x14x15/100 = Rs.1,89,000/-).

8. It is seen that the Tribunal has awarded only a sum of ₹25,000/- towards pain and suffering. In view of the fact that the appellant has sustained severe injuries on his legs and had to keep himself away from work at least for a period of 2 months, as already found by the Tribunal, a sum of ₹35,000/- will be just and proper. Accordingly we award ₹35,000/- towards pain and suffering.

9. In the result, the impugned award of the Tribunal is modified, details of which are given below.:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Amount awarded in this Court (in Rupees).</i>
Loss of earnings	15,000/-	15,000/-
Transport to Hospital	6,000/-	6,000/-
Extra-nourishment	2,000/-	2,000/-
Treatment Expenses	86,500/-	86,500/-
Bystander Expenses	3,800/-	5,700/-
Pain and suffering	25,000/-	35,000/-
Permanent Disability	75,600/-	1,89,000/-
Total claim.	2,13,900/-	3,39,100/-

10. Thus, the appellant is entitled for total compensation of ₹3,39,100/- (Rupees three Lakh thirty nine thousand one hundred only). The enhanced amount of compensation shall carry interest at the rate of 9% p.a. from the date of the petition. The Insurance Company is directed to deposit the amount as per the modified award within three months less the amount already deposited. It is seen that the claim was limited to 3 lakhs before the Tribunal. The Tribunal shall recover the court fee in deficit, if any, from the amount to be deposited by the Insurance Company.

The appeal is accordingly allowed to the above extent.

T. R. Ramachandran Nair, Judge

P.V. Asha, Judge

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