

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

MACA.No. 1306 of 2008 ( )  
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AGAINST THE AWARD IN OPMV 1622/2000 OF MACT,ERNAKULAM  
DATED 13-08-2007

APPELLANT/PETITIONER  
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T.M.KRISHNA PRABHU,S/O MORTHUKA PRABHU  
HOUSE NO.39/4847-A, SOUTH BRIDGE AVENUE ROAD  
PANAMPILLY NAGAR, KOCHI-36.

BY ADV SRI.P.V.LONACHAN

RESPONDENTS/RESPONDENTS:  
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1. BIJU K.S., S/O R.DIVAKARAN NAIR  
SARASWATHI VILASOM, MANJUMMEL NORTH SIDE OF  
MANJUMMAL HOSPITAL, ELOOR VILLAGE, PARAVUR TALUK.

2. UNITED INDIA INSURANCE CO. LTD.,  
KALAMASSERY, THIRUVAKAM BUILDING.

3. THE ORIENTAL INSURANCE CO. LTD.,  
DEEPTHI BUILDING, P.B.NO.2372, PALLIMUKKU  
KOCHI-16.

R3 BY ADV. SRI.P.V.JYOTHI PRASAD

R2 BY ADV. SRI.RAJESH THOMAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

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

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**M.A.C.A.No.1306 OF 2008**  
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Dated this the 24<sup>th</sup> day of June, 2015

**JUDGMENT**

Ramachandran Nair, J.

The claim for compensation filed by the appellant for a total amount of ₹1,75,000/- has been disposed of by the Tribunal by granting ₹47,475/-.

2. We heard the learned counsel for the appellant and the learned counsel for the respondents 2 and 3.

3. The accident occurred on 18.10.1999 at 1:00 p.m.. The appellant was riding his scooter at the place of the accident and it was hit by the offending vehicle, a Maruthi car bearing Reg.No.KL-7/W-498 . He fell down from the scooter and sustained serious injuries and was taken to the Krishna Nursing Home, Ernakulam. He was treated there for 8 days as inpatient and he continued his treatment thereafter as outpatient. The learned counsel for the appellant submits that even though he had produced Ext.A7 series to prove that he was on leave for

68 days, no amount has been granted. It is submitted that the view taken by the Tribunal cannot be justified. The appellant was examined as PW1. He had deposed in support of the averments in the application also. The Tribunal has finally granted amount based on Ext.A9 salary certificate loss of earnings for two months. In the light of the fact that he was on leave for 68 days, we grant a further amount of ₹17,510/- for the said period of two months. Towards pain and suffering, the Tribunal has granted ₹12,000/-.

4. It is clear from the discussion of evidence that when the appellant was admitted, the following features were noted :

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1. Vomiting and bleeding from right ear
  2. Tenderness and crepitus right clavicle ear-lacerated wound on the canal skin.”

The X-ray showed fracture of right clavicle with brain ear of cortical contusion, right frontal lobe and left post parietal region. Since he had sustained a serious head injury, he would have suffered great physical pain also. The treatment had evidently continued for certain months. The circumstance requires enhancement of the amount awarded under pain and suffering also. Therefore we fix an amount of

₹40,000/- for pain and suffering. Accordingly, the award is modified. We grant a further amount of ₹35,510/- than the amount granted by the Tribunal, making the total amount to ₹82,985/- which we round off to ₹83,000/-.

5. The Tribunal has granted interest @ 7.5% from the date of petition which we enhance to 9% per annum for the enhanced compensation. The second respondent Insurance Company has been found liable by the Tribunal, which finding we confirm and there will be a direction to the second respondent to deposit the amount of compensation less the amount already deposited before the Tribunal within three months. We permit the appellant to withdraw the amount also.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

**T.R.RAMACHANDRAN NAIR, JUDGE**

**K.P.JYOTHINDRANATH,JUDGE**

SV.