

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

MACA.No. 1315 of 2008 ()

AGAINST THE AWARD IN OPMV 1544/2008 of M.A.C.T.,KOZHIKODE DATED 17-09-
2007
APPELLANT(S)/PETITIONER IN THE OPMV::

MUNEER, S/O.MOOSA, AGED 28 YEARS,
RESIDING AT MULLERIKANDY HOUSE, ULIYIL P.O.
MATTANNUR VIA., KANNUR.

BY ADVS.SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN

RESPONDENT(S)/RESPONDENTS IN THE OPMV::

1. A.P.BALAN, THARAMMAL THAZHEKUNIYIL
HOUSE, ANIYARAM POST, CHOKLI VIA.
THALASSERY. (DELETED)

2. N.RAMESH, S/O.K.NARAYANAN,
AGED 34 YEARS, ALANKODU HOUSE, THAMARASSERY POST
KOZHIKODE. (DELETED)

3. THE UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE, WHITELINES BUILDING, KALLAI ROAD
KOZHIKODE.
(R1 AND R2 DELETED AS PER ORDER IN IA 3295/2013 DT.11.12.2013)

R,R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1315 of 2008

Dated this the 14th day of July, 2015

JUDGMENT

Jyothindranath, J.

In this appeal, the quantum of compensation awarded by the Tribunal is under challenge. The appellant sustained Grade I compound comminuted fracture SOF (Rt.) and haemarthrosis (Rt) knee. He was in the hospital from 14.5.2001 to 26.6.2001. It is the further submission that even though he was treated by open reduction and internal fixation with K-nail and bone grafting, only a sum of Rs.24,415/- granted as compensation. It is the further submission that due to the injuries, he is having permanent disability which was assessed by a Medical Board. The injured was working in a tea shop and was having an income of more than Rs.5,000/-. The accident occurred on 14.5.2001.

2. We heard learned counsel for the insurance company also.

3. It is submitted before us by the learned counsel for the

insurance company that required documents were not produced before the Tribunal.

4. It can be seen that the Tribunal categorically written that even though sufficient opportunities were given with specific direction, even the wound certificate was not produced.

5. It is also the submission before us that in this case the Tribunal found that the rider of the motor bike on which the appellant was travelling, is also contributed to the accident and the negligence is assessed at 10% to that of the rider of the bike. That aspect is also under challenge.

6. The appellant was treated as inpatient from 14.5.2001 to 26.6.2001, that also in Medical College Hospital, Calicut. A photo copy of the admit card is seen produced before the Tribunal which is marked as Ext.A2. Apart from this, the Medical Board assessed the disability and issued Ext.C1. As per the same, it can be seen that there was fracture shaft of femur as well as injury to right knee and further there was loss of one tooth and the disability is seen assessed as 3%.

The total compensation awarded by the Tribunal is only Rs.24,415/-.

7. The accident occurred on 14.5.2001 while the appellant was travelling as a pillion rider on the motor bike bearing Reg. No.KL-11-M-3083 from Pazhayangadi to Kozhikode. It is the case of the appellant that a lorry bearing Reg. No.KLM 3195 came from the opposite side and hit against the motor bike and in that accident the appellant sustained injuries.

8. It can be seen that here is a case where the accident occurred involving a motor bike as well as a lorry. Drivers of both vehicles are joint tortfeasors. Going by Section 7 of Kerala Tort (Miscellaneous Provisions) Act, 1977 it can be seen that the insurance company of the lorry as well as that of the motor bike will be jointly and severally liable to pay the amount. Under such circumstances, it is found that the insurance company arrayed in the claim petition, will be liable to pay the whole compensation.

8. Thus, coming to the quantum. After going through the award as well as considering the injuries sustained by the appellant and also

keeping in mind the period of treatment and further permanent disability caused to the appellant, an assessment is made as follows, by adopting an amount of Rs.3,000/- per month as the income of the appellant.

<i>Head of claim</i>	<i>Amount awarded</i>
Bystander's expenses	(43 x Rs.200/-) 8600
Extra nourishment	2500
Transport to hospital	2000
Damage to clothing	1000
Medical expenses	2500
Partial loss of earnings	(Rs.3000/- x 3)9000
Pain and suffering	35000
Permanent disability	Rs.3000/- x 12 x 18 x 3/100 19440
Total	80040 (rounded off to Rs.80,000/-)

(Rupees Eighty thousand only)

The enhanced compensation will carry interest at 9% per annum and the third respondent insurance company will be liable to deposit the whole amount before the Tribunal along with interest from the date of petition. On such deposit, the appellant will be entitled to withdraw the

same.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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