

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 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

MACA.No. 1323 of 2008 ()

AGAINST THE AWARD IN OPMV 2586/2001 of M.A.C.T., KOTTAYAM DATED 31-07-2004

APPELLANT(S)/PETITIONER:

ANAND KUMAR,
S/O KOCHUKUNJU, MUNDUVELIL HOUSE, PANCACHIKKAVU BHAGOM
PERUNNA WEST, CHANGANACHERRY TALUK.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENT(S)/RESPONDENTS:

1. SADANANDABHATHAN,
S/O VASUDEVA BHATHAN, PULIYILATH HOUSE
NEAR MUTHOOTU HOSPITAL, KOZHENCHERRY.P.O.
PATHANAMTHITTA.

2. THE NEW INDIA ASSURANCE CO. LTD.,
PATHANAMTHITTA.

R, R1 BY ADV. SRI.D.PEETHAMBARAN

R2 BY ADV. ZIYAD RAHMAN (B/O)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1323 of 2008

Dated this the 10th day of March, 2015

JUDGMENT

Asha, J.

The appellant is the claimant before the Tribunal. He was injured in a motor vehicle accident which occurred on 30.4.2001 while riding his bicycle. A motor car knocked him down and he sustained severe injuries. He was immediately taken to Government Hospital, Changanassery from where he was referred to Medical College Hospital Kottayam, wherein he underwent inpatient treatment for a period of 30 days. He suffered head injury involving subarachnoid haemorrhage and pneumocephalus with fracture right temporal bone, at petromastoid, zygomatic arch and maxillary sinus left. He underwent treatment for a very long period. He developed double vision (diplopia) and recurring head ache. As per Ext.A11 medical certificate, it is seen that he sustained subarachnoid hemmorrhage, hemorrhagic contusion @ medial temporal region and bifrontal contusion, fracture right temporal base with pheumocephalus. Apart from the same, as per Ext.A27 disability certificate issued from Medical College Hospital, it

is seen that the appellant developed post traumatic epilepsy and double vision as a sequence to the injuries sustained in the accident. The disability was assessed at 25%.

2. The claim petition was filed seeking compensation to the tune of Rs.8 lakhs. The Tribunal awarded a sum of Rs.1,03,275/-, after deducting 10% of the admissible amount towards contributory negligence. This appeal is filed seeking enhancement in compensation as well as challenging the deduction towards contributory negligence and the finding on account of that, rendered by the Tribunal.

3. Heard learned counsel for the appellant as well as learned counsel appearing for the insurance company.

4. Learned counsel for the appellant submitted that the Tribunal has seriously erred in finding contributory negligence on the part of the appellant who was riding a bicycle. It is also pointed out that there was no evidence adduced by the insurance company to show that there was any contributory negligence on the part of the appellant.

5. Learned counsel for the insurance company opposed the claim for enhancement and submitted that the finding regarding contributory negligence was rendered on the basis of the records available before the

Tribunal.

6. The Tribunal, in paragraph 14 of the award, has stated that the petitioner/bicyclist was struck down at a point 1.40 metres towards east from the western fringe of the tarred road. It is the wrong side of the bicyclist. Observing this, the Tribunal arrived at the finding that the case of the petitioner that he was knocked down at the eastern fringe of the tarred road cannot be believed in view of the documents Exts.A1 to A4 and Ext.A8. However, after observing that it is for the driver of the offending vehicle to avert to the accident, it was found that major part of the negligence was on the part of the offending vehicle.

7. We find that the respondents in this case did not adduce any evidence in order to prove that the accident caused on account of the negligence on the part of the appellant.

8. The judgment of the Apex Court in **Jiju Kurivila v. Kunjujamma Mohan** (2013 (3) KLT 261 – SC) is relevant herein. In that case the Apex Court held that merely on the basis of scene mahazar and in the absence of any cogent evidence to prove negligence, the Tribunal cannot enter upon any finding. In the light of the above judgment we vacate the finding regarding contributory negligence on the part of the appellant.

9. Regarding the quantum of compensation it is pointed out that the Tribunal has reckoned the income only at the rate of Rs.2,000/- per month, even though the appellant had produced salary certificate as well as his certificates relating to his educational qualifications as Exts.A15 to A18. As per Ext.A18 salary certificate the appellant was drawing an amount of Rs.5,460/- on being employed as Assistant Grade II in M.G. University. The Tribunal did not reckon this amount towards monthly income apparently on the ground that it was a provisional employment. However, in view of the fact that he is educationally qualified and employed, we reckon the monthly income as Rs.5,400/- for the purpose of compensation. Towards loss of earnings, already the Tribunal granted a sum of Rs.8,000/- reckoning that he was unable to undertake employment for a period of four months. Therefore, the compensation under the head of loss of earnings will be Rs.21,600/- (Rs.5400/- x 4 months).

The Tribunal has awarded a sum of Rs.3,000/- alone towards extra nourishment and bystander's expenses. We grant an amount of Rs.4,500/- towards bystander's expenses and an amount of Rs.2,000/- towards extra nourishment. Similarly, the compensation under the head of permanent disability is also to be recalculated. The appellant was aged 34 at the time

of accident. His disability is assessed at 25%. The proper multiplier in the case of a person aged 34, is 16 and therefore the compensation under this head will come to Rs.2,59,200/- (5400 x 16 x 12 x 25/100). The Tribunal has awarded a sum of Rs.8,500/- towards compensation for pain and suffering. Having regard to the grievous nature of the injuries and the discomfort and inconvenience caused to the appellant, we award a sum of Rs.30,000/- towards pain and suffering. In view of the disability incurred, as explained in the medical certificate, the appellant has become incapacitated to enjoy the normal amenities and enjoyment in life. Therefore, we award a sum of Rs.30,000/- towards compensation for loss of enjoyment and amenities in life.

Accordingly, the award passed by the Tribunal is modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Medical expenses	18250	18250
Transport to hospital and damage to clothing	1000	1000
Damage to clothing		1000
Pain and suffering	8500	30000
Injury compensation	8500	
Permanent disability	60000	259200
Loss of earnings	8000	21600

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Loss of enjoyment and amenities in life	7500	30000
Extra nourishment & bystander expenses	3000	4500 + 3000
Total		368550

(Rupees Three lakhs sixtyeight thousand five hundred and fifty only)

The enhanced amount will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

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

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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