

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

MACA.No. 2882 of 2014 ()

AGAINST THE COMMON AWARD IN OPMV 9/2013 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KALPETTA DATED 25-07-2014

APPELLANT/PETITIONER:

SAJU.N.J AGED 42 YEARS
S/O. JOHN, NEERKUZHI PUTHENVEEDU HOUSE
EDAYAOORKUNNU.P.O., KARTIKULAM, MANANTHAVADY TALUK.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS/RESPONDENTS:

1. BABU POULOSE,, AGED 52 YEARS
S/O. POULOSE, PULICKAL HOUSE, KAITHAPOYIL
THAMARASSERY
KOZHIKODE DISTRICT-673001.(DRIVER OF THELORRY
NO. K.L.12/D-6393)

2. VIJAYAKUMAR.M.S., AGE AND FATHER'S NAME NOT KNOWN,
MANTHOTH HOUSE, KAKKAVAYAL.P.O.
VYTHIRI TALUK. (OWNER OF THE LORRY NO. KL.12/D-6393).
PIN-673122.

3. THE ORIENTAL INSURANCE COMPANY
PRAMOD BUILDING, CHEROOTY ROAD
KOZHIKODE. (LOCAL BRANCH OF INSURER DELHI) POLICY
NO. NOT KNOWN. PIN-673001.

R3 BY ADV. SRI.RAJESH THOMAS
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

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

M.A.C.A. No.2882 of 2014

Dated this the 2nd day of February 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor vehicle accident. The accident occurred on 1.11.2010. While he was standing on the extreme side of the road, a lorry bearing Registration No. KL 12D/6393 knocked him down and he sustained very serious injuries. He was taken to Medical College Hospital. He was discharged from the hospital on 19.11.2010 after inpatient treatment for a period of 19 days. As a result of injuries, he lost vision of his left eye completely. The appellant was working as a loading and unloading worker. The Tribunal awarded a sum of Rs. 2,18, 221/- towards compensation. The claim petition was filed seeking a sum of Rs. 5,39,000/-.

2. This appeal is filed seeking enhancement of compensation, aggrieved by the inadequacy of the quantum

awarded under various heads. It was claimed that he was earning a monthly income at the rate of Rs. 10,000/-. He was aged 42 years and his disability was assessed as 30%. The Tribunal reckoned his income at the rate of Rs. 3,000/- per month.

3. We heard the learned counsel on either side. We find that the income reckoned by the tribunal is not reasonable. Having regard to the rate of wages prevailed at the relevant time in respect of loading and unloading workers and the decisions of the apex court in ***Ramachandrappa v. Royal Sundaram Alliance Insurance Company Ltd.(2011 (13) SCC 236)***, where a sum of Rs.4500/- was fixed as monthly income of a coolie with respect to an accident occurred in 2004, we fix the income of the appellant at the rate of Rs. 5,000/- per month. Hence the compensation towards permanent disability will be Rs. 2,52,000/- $(5,000 \times 12 \times 14 \times 30 / 100)$. It is seen that the appellant incurred disability of 30% as a result of loss of his vision of left eye completely. The Tribunal has awarded a sum of Rs. 10,000/- towards pain and suffering and a sum of Rs. 14,000/- towards loss of earning for a period of four months. Having regard to the

nature of injuries sustained and the treatment undertaken, on account of which he was unable to undertake any work for at least 4 months as found by Tribunal, and the discomfort due to the injuries in his eyes, we find it just to enhance the compensation under the head pain and suffering to Rs. 25,000/-. Similarly, he has permanently lost the vision of one eye and hence has become permanently disabled to have enjoyments of the normal amenities in life, as he was able to enjoy prior to the accident. Therefore, we enhance the compensation awarded under the head of loss of amenities also to Rs. 25,000/-. The compensation awarded under the head of loss of earnings for 4 months will come to Rs. 20,000/- (Rs.5,000x4). Towards bystander expenses, the Tribunal has awarded only a sum of Rs. 2,850/- at the rate of Rs. 150/- per day for 19 days. We find it necessary to enhance the same at the rate of Rs. 250/- per day which will come to Rs.4,750/-.

4. Accordingly we modify the award passed by the Tribunal as follows.

<i>Sl. No</i>	<i>Head of claim</i>	<i>Amount awarded (in Rs.)</i>	<i>Amount modified.(in Rs.)</i>
1	Loss of earning (Total)	14000 (3500x4)	20000 (5000x4)
2	Medical expenses	2971	2971
3	Future medical expenses	Nil	Nil
4	Bystander expenses	2850	4750
5	Transportation expenses	1000	1000
6	Extra nourishment	Nil	Nil
7	Damage to clothing	1000	1000
8	Pain and suffering	10000	25000
9	Compensation for permanent disability	176400 (3500x12x14x30/100)	252000 (5000x12x14x30/100)
10	Loss of amenities	1000	25000
11	Loss of earning power	Nil	Nil
	Total	218221	331721

Thus the total compensation will come to Rs. 3,31,721/- .

In the light of the decision reported in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513], we fix the rate of interest at 9% p.a. The enhanced amount of

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compensation will carry interest @9% per annum from the date of petition. The Insurance Company is directed to deposit the amount less the amount already deposited within a period of three months.

The appeal is accordingly allowed. No cost.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge