

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

MACA.No. 2886 of 2014 ()

AGAINST THE AWARD IN OPMV 287/2011 of MACT VADAKARA

APPELLANT/PETITIONER:

K. BALAN AGED 60 YEARS
S/O. KUPPAYI, CHAKKARATHODI HOUSE, PERUMKUNNAM P.O.
PALAKKAD DISTRICT.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENTS/RESPONDENTS:

1. DHAMODHARAN E.
S/O. PAITHAL NAIR, SANNIDHANAMPOOKKODE P.O.
PATHAYAKUNNU, PANOOR, THALASSERY THALUK - 670 692.

2. M.K.MANOJ
S/O. BALAN, LALITHALAYAM HOUSE, MAILULLIMOTTA
PATHIRIYAD P.O., KOTHUPARAMBU
THALASSERY THALUK - 670 641.

3. THE ORIENTAL INSURANCE COMPANY LTD
MICRO OFFICE, OPPOSITE LIBERTY PARADISE
A.V.K NAIR ROAD, THALASSERY - 670 101.

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

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

M.A.C.A.No.2886 OF 2014

Dated this the 5th day of February, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor accident. The accident occurred on 5.11.2009 when the stage carriage vehicle knocked him down while he was walking along the margin of the public road. He sustained fracture of (L) ribs depressed fracture over skull, abrasion of left knee, hemorrhagic contusion bilateral frontal lobes. In Ext.C1 disability certificate the disability was assessed at 33%.

2. Claiming that he was engaged as a cleaner in a lorry with a monthly income of ₹6,000/-, the claim petition was filed seeking compensation to the tune of ₹5 lakhs. The Tribunal awarded a sum of ₹ 1,13,971/- reckoning the income @ ₹3,500/- per month. This appeal is filed seeking enhancement of compensation mainly on the ground that the income reckoned by the Tribunal is too low.

3. We heard the learned counsel on either side.

4. The learned counsel for the Insurance Company points out that the appellant was aged 60 years and the income was not proved.

5. We find that the Tribunal has reckoned the income only @ Rs.3,500/- in the absence of any concrete evidence to prove the income, we deem it fit to fix the monthly income @ Rs.4,500/-. The Tribunal has awarded a sum of Rs.21,000/- towards loss of earnings for a period of six months. Reckoning his income @ Rs.4,500/-, he will be entitled to a sum of Rs.27,000/- towards loss of earning. Under the head of loss of earning power the Tribunal has awarded a sum of Rs.14,580/-, reckoning his disability at 11%. We find that Ext.C1 certifies his disability at 33%. In the place of compensation under the head of loss of earning power, we award compensation towards permanent disability, which will come to Rs.1,60,380/- (4500 x 12 x 9 x 33%). The Tribunal has awarded a sum of Rs.7,500/- alone towards loss of amenities. Having regard to the injuries suffered and the disability incurred by the appellant, we are of the view that the appellant will not be able to enjoy the normal amenities of life as he was enjoying till the date of accident. Therefore we enhance the amount to Rs.25,000/-.

We find that the compensation awarded under other heads is fair and reasonable.

6. Accordingly, the appellant will be entitled to compensation in the following manner.

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning	27000
Transport to hospital	3000
Extra nourishment	2500
Damage to clothing	500
Medical expenses	5291
Bystanders expenses	2600
Pain and suffering	30000
Permanent disability	160380
Loss of amenities	25000
Total	256271 Rounded off to Rs.2,56,270/- (Rupees two lakhs fifty six thousand two hundred seventy only)

7. The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three

months from the date of receipt of a copy of this judgment. The appellant will be permitted to withdraw the amount as and when the same is deposited by the Insurance Company.

The appeal is accordingly disposed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.