

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

MACA.No. 2644 of 2009 ()

AGAINST THE AWARD IN OPMV 962/2006 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, OTTAPPALAM DATED 28-05-2009

APPELLANT/PETITIONER:

AYISHA,W/O.KUNHIMOHAMMED,35 YRS,
MURINGAKODAN HOUSE, NATTUKAL, THACHANATTUKARA POST
PALAKKAD DISTRICT.

BY ADVS.SMT.T.D.RAJALAKSHMI
SRI.R.SREEHARI

RESPONDENTS/RESPONDENTS:

1. P.ABDUL AZIZ,S/O.VEEERAN,
PILAYITHODI HOUSE, VETTATHUR POST
MALAPPURAM DISTRICT.

2. PARAMESWARAN,VALIYAKATTAYIL HOUSE,
MULAKULAM NORTH POST, PIRAVOM, ERNAKULAM DIST
PIN:686 664.

3. NATIONAL INSUTRANCE CO.LTD,
BRANCH OFFICE, 2ND FLOOR, DAMODAR CHAMBERS
STATUE JUNCTION, TRIPUNITHURA, ERNAKULAM DISTRICT.

R2 BY ADV. SRI.PHILIP T.VARGHESE
R, BY ADV. SRI.THOMAS T.VARGHESE
R,R3 BY ADV. SMT.RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A No.2644 of 2009

Dated this the 9th day of January 2015

JUDGMENT

Asha, J.,

The appellant is the injured in a motor vehicle accident which occurred on 7.5.2004, on being hit by a Maruti Omni van bearing registration No. KL-07 AH 5262 while she was walking through the western side of Perinthalmanna- Pattikkad public road. She sustained severe injuries and was taken to the hospital. Ext.A5 is the copy of the wound certificate issued from Al-Shifa Hospital, Perinthalmanna which shows that she suffered fracture supr. and infr. Pubic rami left, S.T. Joint disruption Rt. and left, fracture transverse process L5 Rt., contusion Rt. and left leg. She was subjected to treatment as in-patient in Al-Shifa Hospital, Perinthalmanna for the period from 7.5.2006 to 19.5.2006. As per the disability certificate Ext.A8, the fracture was to be united X-ray wise and there was terminal restriction of

bilateral hip rotation. The doctor assessed her permanent physical impairment as 4% bilateral lower limb. Partial permanent whole body disability was assessed as 2%.

2. The appellant was 32 years of age at the time of the accident and she was working as sweeper earning a monthly income of Rs. 2,650/- which was proved by Ext.A12 certificate issued by the General Manager of the Institution in which she worked.

3. The appellant filed claim petition seeking compensation of Rs. 3 lakhs. It was alleged that she could not attend to her duties for the period from 8.5.2006 to 31.8.2007 and there was a loss of Rs. 41,802/- for the said period. The Tribunal awarded a sum of Rs. 10,800/- reckoning her disability as 2% and adopting the multiplier as 17. From the award it is seen that appellant incurred a sum of Rs. 50,460/- towards medical expenses which was granted by the Tribunal. Thus the Tribunal awarded a total compensation of Rs. 1,00,150/- out of which a sum of Rs. 15,900/- was towards loss of income for the period of treatment.

4. This appeal is filed seeking enhancement of

compensation on the ground that the amount awarded under various heads are thoroughly inadequate. It is seen that the appellant was admitted in the hospital for a period of 13 days. A sum of Rs. 1,950/- was awarded towards bystander expenses. The amount awarded under this head is enhanced reckoning Rs. 200 /- per day i.e. Rs. 2,600/-. The Tribunal has awarded only Rs. 12,000/- towards pain and suffering and Rs. 6,000/- towards loss of amenities. Considering the nature of injuries sustained by the appellant at the age of 32 years, and having regard to the injury sustained on her hip, we find that it would be just and proper to award a sum of Rs. 20,000/- towards pain and suffering. In view of the injuries sustained to her hip, we find that the normal enjoyment of life is restricted for her and it would not be possible for her to have the amenities as before. Therefore, we award a sum of Rs. 15,000/- towards loss of enjoyment of life and loss of amenities. It is seen that the appellant had to remove her implants on completion of treatment. The Tribunal has not granted any amount towards future treatment. We find that it is just and proper to award a

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sum of Rs. 7,500/- towards expenses for future treatment of the appellant. Thus the award is modified accordingly.

<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded</i>	<i>Modified</i>	<i>Basis</i>
1	Compensation for disability	10,800/- (Rs.2,650x12x2/100)	10800	
2	Bystander's expenses	1950	2600	200x13
3	Transportation expenses, extra nourishment and damage to clothing.	3000	3000	
4	For pain and suffering	12000	20000	
5	Loss of amenities	6000	15000	
6	Loss of income	15900	15900	
7	Future treatment expenses		7500	
8	Medical expenses	50500	50500	
	Total	1,00,150/-	1,25,300	

5. The Tribunal has granted interest only at the rate of 7.% p.a. In the light of the judgment of the apex court in **Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513], we fix the interest at the rate of 9% p.a from the date of petition.

The Insurance Company is directed to deposit the entire

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amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment. The appeal is allowed accordingly. No cost.

Sd/-

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

Sd/-

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

AL/-

True copy

P.A to Judge

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corrected fair copy