

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

MACA.No. 1352 of 2008 ()

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AGAINST THE AWARD IN OPMV 1417/2000 of M.A.C.T., THALASSERY
DATED 16-11-2007
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APPELLANT(S)/APPELLANT/PETITIONER :

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K.P.PADMINI, W/O.NARAYANAN, AGED 58 YEARS,
'MANA NIVAS', IRINAVU POST
CHERUKUNNU VIA, KANNUR DISTRICT.**

**BY ADVS.SRI.V.V.ASOKAN
SRI.P.P.RAMACHANDRAN**

RESPONDENT(S)/RESPONDENTS:

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- 1. MOHAMMED KUNHI.K., S/O.YOUSUF HAJI,
SAJURA MANZIL, BENGLAM, NEELESWAR P.O.
KASARAGOD DISTRICT.**
 - 2. MUHAMMED HANEEFA N.P.,
S/O.C.K.AHMED, NALUPURAPATTU, PLACHIKKARA
KASARAGOD DISTRICT.**
 - 3. THE ORIENTAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, CITY POINT BUILDING
PRESS CLUB JUNCTION, KASARAGOD P.O**
 - 4. P.SASIKUMAR, "SWATHI", NEAR
MUTHUKKAD TEMPLE, MUPPATHADAM
ALUVA P.O. ERNAKULAM DISTRICT.**
 - 5. UNITED INDIA INSURANCE COMPANY LTD.,
CITY BRANCH OFFICE, KANNAMKERI ESTATE,
SHANMUGHAM ROAD, ERNAKULAM.**
 - 6. K.V.PUSHPA, D/O.KARUNAKARAN,
KARUNA NIVAS, MISSION COMPOUND, CHOVVA
KANNUR-6.**

**R3 BY ADV. SRI.VPK.PANICKER
R5 BY ADV. SRI.N.S.MOHAMMED USMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

M.A.C.A.No.1352 of 2008

Dated this the 13th day of July, 2015

JUDGMENT

K.P.Jyothindranath, J

This appeal is preferred by the claimant in O.P.(MV).No.1417/2000 on the file of M.A.C.T., Thalassery. The appellant herein challenges the quantum of compensation awarded by the Tribunal.

2. The facts in a nutshell are as follows: A motor vehicle accident occurred on 03-10-1999. The appellant was driving a Tempo Van bearing Reg.No.KL-7/H 9244. A Bus bearing Reg.No.KL-14/B 1440 came and hit against the same and the appellant herein sustained very grievous injuries. A claim petition was moved before the Tribunal for a total compensation of Rs.2,35,000/-. After appreciating the materials, the Tribunal awarded only a sum of Rs.53,000/-. Aggrieved by the quantum of compensation awarded, the appellant preferred this

appeal.

3. When the appeal came up for hearing, the learned counsel for the appellant submitted before us that the appellant was an agriculturalist. It is the further submission that she was aged 50 years and she sustained very serious injuries. It is the submission that immediately after the accident, she was taken to a hospital at Mangalore and was treated therein. Ext.A2 is the wound certificate issued from the said hospital, which will show that she was treated therein and thereafter, she had continued her treatment at Mangala Nursing Home. It is the further submission that altogether, she was in the hospital for 12 days as inpatient. It is further submitted before us that it can be seen from Exts.A2 and A3 that she had sustained fracture of ribbes as well as there was a head injury and compensation awarded on various heads are inadequate and an interference by this Court is warranted.

4. The learned counsel for the insurance

company submitted before us that the accident occurred in the year 1999. It is the further submission that it can be seen that after the accident, she sustained injuries in another fall. It was about 3 years after the earlier accident. It is an admitted case that her hand was broken in that fall and the Tribunal after considering all these facts, passed the award. An interference is not warranted. It is also submitted before us that the Tribunal discarded the disability certificate as the assessment was after the second accident and the assessment is only that of present disabilities.

4. We, after hearing the counsel, perused the documents. Ext.A2 is the certificate issued from Govt.Hospital, Mangalore. In that, she was seen admitted therein on 03-10-1999 and discharged on 08-10-1999. At the time of discharge, it is noted as 'discharged against medical advise'. It can be further seen that on investigation, it is revealed that there was fracture on ribs and skull. Ext.A2 is the photocopy of a discharge

card issued from the Mangala Nursing Home. As per the said document, the date of admission is seen as 08-10-1999 and date of discharge is on 15-10-1999. There it is noted as she was in the altered orientation at the time of admission. The fracture on ribbes and skull is also noted therein. It appears that after the scan, the finding noted is Subdural Haematoma. Ext.A9 is the disability certificate issued by consultant Surgeon. As per the said document, the disability is seen assessed as 50%.

5. In this case, after going through the said documents, it can be seen that the injuries sustained to the humerus is also seen considered in the said disability certificate. It is specifically noted that she has sickness and restriction of right shoulder extension and flextion movements. It is also noted that she has sickness on back and neck muscles. At the very same time, it is also to be remembered that this is a case, where there is fracture of skull. Moreover, there is rib fracture. In Ext.A9, it is further noted that 'Old rib fracture'.

6. Considering the occupation alleged, we feel that it will be only just and proper to adopt a sum of Rs.3,000/- as monthly income for calculation purpose for assessing the partial loss of income during the treatment period. Four months is considered for this purpose, as this is a case of fracture of skull as well as fracture of ribs. After considering all aspects just compensation is assessed as follows.

Head of claim	Amount Awarded in rupees
(a) Transportation expenses	Rs.3,000/-
(b) Expenses for bye-standers	Rs.1,500/-
(c) Compensation for Extra-nourishment	Rs.1,500/-
(d) Compensation for Medical expenses	Rs.15,000/-
(e) Compensation for Loss of earnings (3000x4 = 12,000)	Rs.12,000/-
(f) Compensation for Pain and suffering	Rs.35,000/-
(g) Compensation for Loss of amenities	Rs.15,000/-
(h) Other expenses	Rs.2,000/-
Total	Rs.85,000/- (Rupees eighty five thousand only)

Thus, the appellant is entitled for a total sum of

Rs.85,000/-(Rupees eighty five thousand only). The enhanced compensation alone will bear interest at the rate of 9% from the date of the petition. The third respondent shall deposit the amount within a period of three months of this order. Parties shall bear cost in the appeal.

Sd/-

T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-

K.P.JYOTHINDRANATH, JUDGE

VS

/TRUE COPY/

PA TO JUDGE