

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 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

MACA.No. 2341 of 2010 ()

AGAINST THE AWARD IN OPMV 427/2007 of MACT PALA DATED 04-11-2009
APPELLANT(S)/PETITIONER:

GEORGE, S/O. MARKOSSE, PANIKUNNEL HOUSE,
MOOLAMATTOM EAST KARA, ARAKKULAM VILLAGE
IDUKKI DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT(S)/RESPONDENTS:

1. JOBBY, S/O.AUGUSTINE,
THONIKKALIL HOUSE, NEDIYASHALA KARA, MANAKKADU VILLAGE
THODUPUZHA TALUK.

2. THE ORIENTAL INSURANCE CO. LTD.,
REP. BY ITS BRANCH MANAGER, P.B. NO. 8
JYOTHI SUPER BAZAR, THODUPUZHA.

R,R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.2341 of 2010

Dated this the 29th day of January, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident. On 26.3.2007 at about 2.30 p.m. while he was travelling in a mini lorry, the vehicle overturned and he sustained very serious injuries. The appellant sustained Type 3 open fracture (L) leg both bones (communited) and calcaneal fracture (L). He was taken to the hospital and treated as inpatient from 26.3.2007 to 18.4.2007 and thereafter from 18.10.2007 to 12.11.2007. After getting discharge from the hospital he had to undergo treatment as outpatient further, for a long period.

2. The appellant claimed that he was working as a loading and unloading worker earning a monthly income of Rs.5,000/-. He was aged 26 years. The claim petition was filed seeking compensation The Tribunal awarded a sum of Rs.2,41,000/- along with interest at the rate of 9% per annum. This appeal is filed seeking enhancement of

compensation. Learned counsel for the appellant submitted that the amount awarded under various heads are inadequate and the income assessed is too low.

3. We heard learned counsel for the appellant and learned counsel for the insurance company who opposed the claim for enhancement.

4. The appellant sustained severe injuries on account of the accident. He had to undergo prolonged treatment during which he underwent surgeries as well as implants. This has resulted in disability also which is assessed at 30% in Ext.X1 document. The Tribunal, though found that the notional income can be fixed at Rs.4,500/-, the monthly taken is at the rate of Rs.3,000/- after deducting 1/3rd for personal expenses and awarded a sum of Rs.12,000/- towards loss of earnings for four months. We find that the deduction of any amount towards personal expenses was unwarranted in the case of assessing compensation to the injured. Therefore, going by the income reckoned by the Tribunal itself, the compensation towards loss of earnings for a period of four months will come to Rs.18,000/-. The Tribunal granted Rs.6,000/- towards bystander's expenses, even though it was found that

the appellant underwent treatment in hospital itself for a period of more than 50 days. Therefore, we enhance the amount under this head to Rs.10,000/- reckoning the wages at Rs.200/- per day. Towards treatment expenses the appellant had to incur a sum of Rs.42,900/- which the Tribunal has granted already. But towards pain and suffering, the Tribunal awarded only Rs.25,000/-. Having regard to the grievous nature of injuries and the prolonged treatment undertaken thereafter, we grant a sum of Rs.35,000/- towards pain and suffering. It is seen that the appellant had incurred disability to the tune of 30% and there is shortening of limb. Therefore, it is seen that he was incapacitated and thereby lost the enjoyment of normal avocations in life as before. Therefore, we grant a sum of Rs.20,000/- towards loss of enjoyment and shortened expectation of life. The Tribunal granted a sum of Rs.20,000/- towards loss of amenities and disfigurement. The appellant was aged 26 years at the time of accident. The disfigurement has seriously affected his marriage prospects. Therefore, we award a sum of Rs.35,000/- for loss of marriage prospects and a further sum of Rs.20,000/- towards disfiguration.

Accordingly, we modify the award as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Loss of earnings	12000	18000
Transport to hospital	4000	4000
Extra nourishment	1000	1000
Damage to clothing & articles	500	500
Medical expenses	42900	42900
Bystander expenses	6000	10000
Pain and suffering	25000	35000
Permanent partial disability	129600	291600 (4500 x 12 x 18 x 30/100)
Loss of amenities and disfigurement	20000	40000 (20000 + 20000)
Loss of marriage prospects		35000
Total		478000

The appellant will be entitled to interest at 9% per annum for the enhanced amount of compensation. 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. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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