

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 MARCH 2015/14TH PHALGUNA, 1936

MACA.No. 2959 of 2014

**AGAINST THE AWARD IN OP(MV) 631/2008 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, THODUPUZHA, DATED 05-03-2014**

APPELLANT/PETITIONER:

**MOHANAN P K, AGED 42 YEARS
S/O.KUNJUMON, PALLIPADICKAL HOUSE, 10TH MILE
VALARA P O , ADIMALY, MANNAMKANDAM VILLAGE
IDUKKI DISTRICT.**

BY ADV. SMT.BINITHA JAMES

RESPONDENT(S)/RESPONDENTS:

- 1. DINU, S/O.JOHN, THADATHIKKATTU HOUSE, VALARA P O
ADIMALY, MANNAMKANDAM VILLAGE, IDUKKI DIST-686686.**
- 2. VARGHESE,
S/O.ULAHANNAN, NIRAVATH HOUSE, VALARA PO
ADIMALY, MANNAMKANDAM VILLAGE, IDUKKI DIST-685586.**
- 3. THE ORIENTAL INSURANCE CO LTD
REP BY ITS BRANCH MANAGER, EDAPPALLY, ERNAKULAM-682024.**

**R3 BY ADV. SMT.A.SREEKALA
BY SMT.K.S.SANTHI**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

MACA.No. 2959 of 2014

APPENDIX

PETITIONERS' ANNEXURES

A1: ATTESTED COPY OF THE DRIVING LICENSE.

RESPONDENTS' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

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

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M.A.C.A No.2959 of 2014

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Dated this the 5th day of March, 2015

JUDGMENT

Ramachandran Nair, J

The claimant, injured in an accident, is the appellant herein. The accident occurred while he was travelling in an auto rickshaw bearing Reg. No.KL-6D/1948 driven by the 1st respondent. It occurred on 31.01.2008 at about 9:30 p.m. Due to the excessive speed, the auto rickshaw overturned and the appellant sustained serious injuries. He was immediately taken to the MOSC Medical College Hospital, Kolencherry and was treated as an inpatient there. As against the total compensation claimed at Rs.1,50,000/- the Tribunal has awarded Rs.2,25, 270/-.

2. The learned counsel for the appellant submitted that he was a driver having heavy vehicle driving licence along with badge. But, the Tribunal has adopted monthly income only at

Rs.4,000/-. The said view was taken since he could not produce the driving licence at that point of time. In this appeal he has produced the driving licence as Annexure A1 along with I.A No.3410/2014. It shows that the licence is issued at first on 15.09.1993 and during the date of the accident also it was valid and he was having badge also. Therefore, it can be safely concluded that he was a heavy vehicle driver duly licensed. Since the accident occurred in the year 2008, we adopt the monthly income at Rs.7,000/-.

3. He had sustained pain on the right wrist with swelling, pain on the right thigh and restricted movements, comminuted fracture shaft of right femur and fracture right radius and for non-union of fracture shaft of right femur with interlocking nail. He underwent a surgery (bone grafting under spinal anesthesia). These details are supported by Exts. A4 to A6 medical certificates.

4. The next aspect pointed out is that the Medical Board had assessed the disability at 19%. It will show that he has difficulty in walking, sitting and squatting and he has restricted movements of right wrist joint and for rotating movements of interior radio

ulnar joint. The Tribunal found that the disability has affected the quality of life of the petitioner. The Tribunal finally assessed the disability to 15% and also found that his earning capacity has not been proved.

5. Even if there is no loss of earning power, even then he will be entitled to compensation for the percentage of disability sustained along with compensation for pain and suffering as well as loss of amenities of life.

6. We will be justified in adopting 19% itself as the disability and the compensation will have to be reassessed accordingly. As far as pain and suffering is concerned, what is awarded by the Tribunal is Rs.20,000/-. He was in the hospital for a period of 27 days and could not work for another three months due to the treatment going on. Therefore, we award an amount of Rs.35,000/- towards the pain and suffering. The compensation for loss of amenities has been assessed at Rs.15,000/-. In the light of the finding rendered by the Tribunal itself as regards the fact that the quality of life of the appellant has been affected, we enhance the same to Rs.30,000/-. Accordingly, we recompute the

compensation in the following manner.

Sl. No.	Head of claim	Amount Awarded by the Tribunal (in Rupees)	Amount refixed in this Court (in Rupees)
1	Bystander expense	5400	6750(250 x 27)
2	Loss of earning	24000	28000(7000 x 4)
3	Transportation expense	2500	2500
4	Extra nourishment	1500	1500
5	Medical expenses	55570	55570
6	Damage to clothing	500	500
7	Pain and suffering	20000	35000
8	Disability	100800	223440
9	Loss of amenities	15000	30000
10	Total	Rs.225270/-	Rs.383260/-

7. Even though the claimant had limited his claim to Rs.1,50,000/-, in the light of the decision of the Apex Court in **Nagappa V Gurudayal Singh (2003(1) KLT 115(SC))** and **Rajesh V Rajbir Singh (2013(3) KLT 89(SC))**, there is no restriction on the power of this Court to grant adequate compensation as arrived at. He will pay court fee for the total

amount awarded by this Court. There will be a direction to the Insurance Company to deposit the amount within three months. The enhanced amount will carry interest at 9% per annum. The Tribunal will disburse the amount after recovering the court fee payable by the appellant.

Appeal is allowed accordingly.

The parties will have to suffer their respective costs in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR (JUDGE)

Sd/-
P.V.ASHA (JUDGE)

vdv