

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

MACA.No. 2373 of 2010 ()

AGAINST THE AWARD IN OPMV 1055/2006 of M.A.C.T., MANJERI

APPELLANT/PETITIONER

AJITH KUMAR, S/O ARAVINDAKSHAN PILLAI
VASANTHALAYAM, VADUTHALA P.O., KOCH-23.

BY ADVS.SRI.THOMAS ABRAHAM
SRI.DIPU.R
SMT.MERCIAMMA MATHEW
SRI.K.S.HARIDAS
SRI.V.RENJITH KUMAR

RESPONDENTS/RESPONDENTS:

1. DADA SHELKE, A/P
RANJANGAON SANDAS, TAL SIRUR, PUNE DISTRICT
MAHARASHTRA (DRIVER OF THE
LORRY REGISTRATION NO.MH 12 CH 9017). (DELETED)

2. JOSE FRANCIS, S.NO.37/4,
KODE, BUILDING, DHANKAWADI
CREATER MUMBAI, MAHARASHTRA, PUNE DISTRICT (OWNER)
(DELETED)

3. THE NEW INDIA ASSURANCE CO.LTD.,
MADRAS-17, (INSURER OF THE LORRY BEARING
REGISTRATION NO.MH-12 CH 9017).

* RESPONDENTS 1 AND 2 DELETED FROM THE PARTY ARRAY VIDE ORDER
DATED 12.2.2015 IN I.A.NO.339/2015

R3 BY ADV. SRI.LAL GEORGE

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

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

M.A.C.A.No.2373 OF 2010

Dated this the 3rd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellant injured in an accident aggrieved by the inadequacy of the compensation. As against the total compensation claimed at Rs.3 lakhs, Rs.1,86,905/- has been granted by the Tribunal with interest @ 7% per annum from the date of petition.

2. We heard the learned counsel on both sides.

3. The learned counsel for the appellant submitted that the Tribunal has not granted any amount towards permanent disability even though going by Ext.X1 certificate, he has got 2% disability. It is also submitted that the compensation awarded is too low on certain other heads also.

4. We find on a reading of the judgment that the appellant was inpatient for 51 days in the hospital. Exts.A1 to A6 are the documents produced to prove the accident as well the treatment. He had sustained

left ear bleeding, fracture BB right leg, fracture left temporal bone etc. in the accident which occurred on 20/05/2005. While he was travelling in a motor cycle bearing Reg.No.KL-10 U 4827 as pillion rider, a lorry bearing Reg.No.MH 12 CH 9017 which came from the opposite side, hit down the vehicle. He was treated in the Al Shifa Hospital, Perinthalmanna.

5. The learned counsel for the Insurance Company submits that adequate compensation has been granted. We find on a perusal of the schedule appended to the award that Rs.15,120/- has been granted towards loss/reduction in earning capacity. Since there is no evidence to prove the loss/reduction in earning capacity, the said amount can be reckoned as one granted for permanent disability itself. Of course, the appellant is entitled to compensation towards pain and suffering and other special damages.

6. The learned counsel for the appellant submits that for loss of amenities, nothing has been granted. We find that the disability is only 2%. But he will be entitled to enhancement under other heads, namely pain and suffering, extra nourishment, transportation expenses and

bystander expenses. He was inpatient for a period of 51 days and the Tribunal has granted Rs.100/- per day towards bystander expenses. The accident is of the year 2005. Therefore we grant @ Rs.250/- per day for 51 days, which will come to Rs.12,750/-. Towards transportation, we grant a total amount of Rs.2,000/- For extra nourishment, Rs.3,000/- is granted. As far as pain and suffering is concerned, since he was in hospital for 51 days as inpatient, we are of the view that an amount of Rs.40,000/- will be reasonable. The amounts granted under all other heads are found be reasonable.

7. Accordingly, the appellant will be entitled for compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of earning (partial)	24500
Medical and miscellaneous expenses	122835
For disfigurement	2000
Bystander expenses	12750
For reviews (16 times)	1600
Transportation	2000
Extra nourishment	3000
Damage to clothing	250

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Pain and suffering	40000
Permanent disability	15120
Total	224055 Rounded off to Rs.2,24,000/- (Rupees two lakhs twenty four thousand only)

8. 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 appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.VASHA, JUDGE

SV.