

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

MACA.No. 2788 of 2009 ()

AGAINST THE AWARD IN OPMV 2821/2001 of M.A.C.T., ERNAKULAM DATED
25-11-2008

APPELLANT/PETITIONER IN OPMV 2821/2001:

JIJO @ JESUS, AGED 33, S/O. GEORGE,
KELOTH (H) V.P.SASI ROAD, KONAM, PALLURUTHY.

BY ADV. SRI.V.A.OMANAKUTTAN

RESPONDENTS/RESPONDENTS IN O.P. (MV) :

1. K.V.VINCENT, S/O. ITOOP VAREED
KOLATHUKUDY HOUSE, AYYAMPUZHA, ALUVA.

2. A.C.PAPPACHAN, AUTOKKARAN HOUSE,
KATTAMAM, NELEESWARAM.

3. THE NATIONAL INSURANCE CO.LTD.P.B.NO.24,
MULLAPPALLY BUILDINGS, A.M.ROAD, PERUMBAVOOR.

R3 BY ADV. SRI.S.K.AJAY KUMAR

R1 & 2 BY ADV. SRI.DINESH MATHEW J.MURICKEN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2788 OF 2009

Dated this the 27th day of May, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred against the award dated 25.11.2008 in O.P.(MV) No.2821/2001 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The petitioner is the appellant. The case of the appellant is that the accident occurred on 24.5.2001 at about 9.20 a.m. While the appellant was travelling as pillion rider on the motor bike bearing Reg.No. KL-7/Y-6229. The bike was ridden by his brother and when the vehicle reached at Pulinchodu, a tanker lorry bearing Reg.No. KL-7/AA-2957 driven by the first respondent came from south to north direction, which was driven rashly and negligently, over took the motor bike through the left side of the said motor bike and hit on the back side of the appellant. In that accident, the appellant was thrown away on the road and sustained severe injuries.

2. The appellant filed the petition for compensation and after

considering the evidence before the Tribunal, the Tribunal found that the accident occurred due to the negligent driving of the lorry and awarded compensation. Even though the appellant claimed a total sum of Rs. 3 lakhs, the Tribunal awarded only a sum of Rs. 96,500/-. The main submission made before us is that the quantum awarded is very meagre and the evidence has not been considered properly by the Tribunal.

3. The injuries sustained by the appellant are :

1. Type II open fracture medial epicondyle(R) humerus posterior dislocation (R) radial head.
2. Type I open fracture both bones (R) forearm junction of M/3rd and L/3rd .
3. Lacerated wound with abrasion over (R) arm dorsally.
4. Swelling and tenderness (R) elbow and forearm
5. Puncture wound (R) forearm dorsally
6. Abrasions lateral aspect of (L) upper thigh
7. Skin deep laceration over (R) heel.

4. The appellant was treated as an inpatient for a period of 22

days. The appellant produced medical bills worth Rs. 43,220.34 paise. The medical board assessed the disability as 12% as per Mc Bride's scale. The case of the appellant is that he is a merchant. After considering all the materials before us, it is found that appellant is entitled for enhancement.

5. After considering all these aspects, the appellant is awarded a sum of Rs. 3,300/- towards bystander's expenses, another sum of Rs. 3,000/- towards extra nourishment, a sum of Rs.2,000/- is awarded towards transportation expenses and after considering the medical bills, a sum of Rs.43,500/- is directed to be reimbursed to him. Considering the fact that the appellant had completed pre-degree course and claimed that he is a merchant, a sum of Rs.2,500/- is considered as his monthly income and thus a sum of Rs.10,000/- is granted towards loss of earnings for a period of four months. Towards permanent disability, a sum of Rs.64,800/- is awarded ($2500 \times 12 \times 18 \times 12\%$). A sum of Rs.30,000/- is awarded towards pain and suffering and another sum of Rs. 20,000/- towards loss of amenities. Thus the appellant is found to be entitled for a total compensation of Rs. 1,76,600/- (Rupees one lakh

seventy six thousand six hundred only). The enhanced amount will carry interest @ 9% per annum from the date of petition. The Insurance Company will deposit the amount within a period of three months.

The appeal is allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.