

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 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

MACA.No. 2485 of 2010 ()

AGAINST THE AWARD IN OPMV 819/2007 of M.A.C.T OTTAPPALAM
DATED 23-04-2010

APPELLANT/PETITIONER:

MADHAVAN
S/O.KITTUNNI,
MUNDE MADATHIL HOUSE,
MEZHATHUR AMSOM DESOM,
OTTAPALAM TALUK
PALAKKAD DISTRICT.

BY ADV. SRI.P.K.MOHANAN (PALAKKAD)

RESPONDENT(S) /RESPONDENTS:

1. JOVI JOHN,
S/O.JOHN, AGED 22 YEARS,
CHIRAMMAL PADINJARETHALA VEEDU, MANALLOOR WEST
MANALLOOR VILLAGE, PIN 680 617
THRISSUR (RIDER OF KL-8/X-2701-MOTORCYCLE).

2. JOHN, S/O.CHACKU, AGE NOT KNOWN,
CHIRAMMAL PADINJARETHALA VEEDU, MANALLOOR WEST
MANALLOOR VILLAGE, PIN 680 617
THRISSUR (OWNER OF KL-8/X-2701-MOTORCYCLE).

3. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE NO.1, T.A BUILDING, PB NO.158
ROUND WEST, THRISSUR, (INSURER OF KL-8/X-2701-MOTOR
CYCLE) POLICY NO.441101/2007/891,
VALID FROM 7/5/06 TO 6-5-07.

R,R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.2485 of 2010

Dated this the 27th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

The appeal is filed by the claimant who was injured in a motor accident on 08.12.2006. The appellant claimed that he was conducting a teashop and the accident occurred while he was walking through the side of a road near Saktan Thampuram bus stand at Thrissur. The offending vehicle is a motorbike bearing Reg.No.KL-8/2701 ridden by the 1st respondent before the Tribunal.

2. As the appellant sustained serious injuries, he was taken to the Medical College Hospital, Trichur and was treated there.

3. The learned counsel for the appellant submitted that as against the claim of Rs.2 lakhs he was awarded an amount of Rs.1,41,750/-. It is submitted that the Tribunal has fixed the monthly income at Rs.3,000/- as against the claim of Rs.5,000/-. The evidence is to the effect that he was conducting a teashop and Ext.A11 licence and Ext.A12 receipt of license fee have been

produced.

4. It is also submitted that the compensation awarded towards loss of amenities, inconveniences as well as pain and sufferings are too low. It is pointed out that he was in the hospital for a period of 85 days and had sustained fractures, had lost 3 teeth and implants were also applied which had to be removed later. It is also submitted that in the disability certificate the Doctor has noted 21% disability and the Tribunal has reduced it to 10% for awarding compensation.

5. As far as the injuries sustained by the appellant are concerned, there were fractures of both bones of right leg as well as fracture of right macilla sinus, right orbit and right zygoma. He lost 3 teeth. He was treated as an inpatient for a period of 84 days. He was examined as PW1. According to him, there were 24 reviews. Even now he is using a stick for walking.

6. Going by Ext.A6 wound certificate, the injuries noted are lacerated wound 5X3 bone deep over the Rt. Eyebrow, lacerated wound 8X5 bone deep on the antero-lateral aspect of left leg. There was fracture on the right leg (both bones), fracture of right macilla sinus, right orbit and right zygoma.

7. To prove the details of treatment and the period of

treatment, Ext.A7 series issued by the Medical College Hospital have been produced. The Tribunal has noticed various details in para.8 of the award. It is seen that he was admitted on 08.12.2006 and was discharged on 30.12.2006. He was readmitted on 11.01.2007 and discharged on 17.1.07. The fracture was noted as type III open fracture. Again he was readmitted on 25.5.07 and discharged on 23.6.07 and the diagnosis noted is comminuted fracture BB Rt. Leg, non-union. He was again admitted on 08.03.08 and discharged on 5.4.08. We have gone through the disability certificate Ext.A8. It shows that the wound debridement was done and external fixture was applied and skin grafting was also done. In the certificate the following details are noted down.

"On examination

(Clinically & radiologically) (X-ray on 12/12/08)

- | | | | | |
|--------|----|--|-------------|--------------|
| R leg. | 1. | Malunited fracture of both bone ® leg with varus in | | |
| | 2. | He has 1 inch shortening in ® leg. | | |
| | 3. | He has stiffness of ® knee.
Range 0 - 80, Normal 0 - 140. | | |
| | 4. | He has stiffness of ® ankle. | | |
| | | Dorsiflexion | Range
15 | Normal
25 |
| | | Planterflexion | 15 | 35 |
| (R)." | 5. | He has got malunited fracture of zygoma and maxilla | | |

The Doctor has assessed 21% permanent disability on the whole

body. What is clear from the above is that there is a malunited fracture of both bones of right leg. There is one inch shortening in right leg as well as stiffness of right ankle and right knee.

8. We reproduce below the table in para.10, which shows that the Tribunal has awarded amounts under various heads:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt. awarded</i>
1	Loss of earning (total)	Rs. 18,000.00
2	Loss of earning (Partial)	Rs. 6,000.00
3	Medical and miscellaneous expenses	Rs. 36,250.00
4	Bystander expenses	Rs. 8,400.00
5	Transportation expenses	Rs. 5,000.00
6	Extra nourishment	Rs. 3,000.00
7	Damage to clothing etc.	Rs. 500.00
8	Pain and suffering	Rs. 15,000.00
9	Loss/reduction in earning capacity	Rs. 39,600.00
10	Loss of amenities and conveniences etc.	Rs. 10,000.00
	TOTAL	Rs. 1,41,750.00

9. As far as items 1 and 2 are concerned separate amounts have been awarded which is not justified. Column 1 will relate to partial loss of earnings and the Tribunal has granted Rs.18,000/- by taking monthly income as Rs.3,000/-.

10. As regards the monthly income, the learned counsel for the appellant submitted that Rs.5,000/- claimed is a

reasonable amount. The learned counsel submitted that he was conducting a teashop by himself. There is no case that the appellant had to stop the teashop because of sustaining injuries in the accident. Therefore we will have to find out the proper method for awarding compensation. Since it is a case of appellant doing business by himself, the question will be how far the disability could be reckoned for the purpose of considering whether there is reduction of income as such. It will be a case where we will have to assess the compensation on the premise that the injuries will adversely affect him from performing his duties as before. Therefore it may not be a case where we can readily presume the loss of income due to loss of earning power as such. But we will have to adopt a reasonable method by fixing his income considering his services either in managing the functioning of the teashop as well as performing certain odd jobs in the teashop. Therefore even though Rs.5,000/- has been claimed, we will be justified in adopting Rs.4,000/- which will represent the quantum for the services he had rendered in managing the teashop. We are also of the view that there was no justification in reducing the disability to 10% by the Tribunal.

11. The Tribunal has granted compensation by taking

Rs.3,000/- for 6 months and another Rs.1,500/- for 4 months. Since we are granting for partial loss of earnings @ Rs.4,000/- per mensem, the amount will be Rs.24,000/- and we delete the amount granted separately, namely, at Rs.6,000/- by taking Rs.1,500/- for a period of 4 months.

12. As far as medical and miscellaneous expenses, transportation expenses, expense for extra nourishment and damage to clothing are concerned, we find that reasonable amounts have been granted. As far as bystander's expenses is concerned, we will be justified in granting an amount @ Rs.200/- per day for 84 days and therefore the total amount will be Rs.16,800/-.

13. The Tribunal has granted an amount of Rs.39,600/- for the disability sustained as item No.14 under the head Loss/reduction in earning capacity. It will be a case where the appellant will have to be compensated for the permanent disability and coupled with it he will be entitled for a reasonable amount towards loss of amenities and loss of enjoyment of life. As far as the permanent disability is concerned, he will be entitled for an amount of Rs.1,10,800/-.

14. Even though the learned counsel for the appellant

submitted that no amount has been granted for future treatment since the details of such requirement are not available, going by the discharge summary and the treatment procedures he had to undertake in future, we will not be justified in granting any amount for future treatment.

15. Lastly it is submitted by the learned counsel for the appellant that two other heads for which compensation will have to be granted are pain and suffering as well as loss of amenities and inconvenience etc.

16. The learned counsel for the appellant submitted that the appellant was in the hospital for a period of 84 days and had undergone various treatment procedures including skin grafting and reviews on different occasions (24 in total) going by the evidence of PW1.

17. The learned counsel for the Insurance Company submitted that while granting amounts for general damages, this Court may have to consider the impact of the liability on the insurance company, if this Court is of the view that the amounts awarded under various heads require enhancement. The learned counsel submitted that the insurance company will have to bear the burden for payment of interest from the date of

petition and therefore, a reasonable amount by reckoning all these factors alone may be granted.

18. Of course in awarding compensation various aspects will have to be considered. When compensation awarded is under challenge, the reasonableness of the amount awarded by the Tribunal will be a matter for consideration by this Court in appeal. Therefore, once amount is granted under a particular head, it will have the effect from the date of petition. No other principle has been brought to our notice whereby this Court can refuse to consider the said aspect as well as the liability for paying the interest on the amount of compensation.

19. Therefore we proceed to consider the reasonableness of the quantum awarded. Of course the factors like inflation, reduction in money value etc. are some of the aspects which may have to be considered. The amount of compensation a claimant would have been eligible to get will have to be assessed, taking into consideration various imponderables. Therefore, we proceed to consider the compensation under the heads pain and suffering as well as loss of amenities of life.

20. In the light of the substantial long period of treatment as well as the skin grafting undertaken by him, we will be

justified in granting an amount of Rs.35,000/- towards pain and sufferings and Rs.30,000/- for loss of enjoyment and amenities of life considering the fact that there is a shortening of one inch in right leg, stiffness of right knee as well as right ankle and there is malunited fracture of zygoma and maxilla right.

21. Accordingly we refix the compensation as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt. awarded</i>
1	Loss of earning (total)	Rs. 24,000.00
2	Medical and miscellaneous expenses	Rs. 36,250.00
3	Bystander expenses	Rs. 16,800.00
4	Transportation expenses	Rs. 5,000.00
5	Extra nourishment	Rs. 3,000.00
7	Damage to clothing etc.	Rs. 500.00
8	Pain and suffering	Rs. 35,000.00
9	Permanent disability	Rs. 1,10,800.00
10	Loss of enjoyment and amenities of life	Rs. 30,000.00
	TOTAL	Rs. 2,61,350.00

(Rupees Two lakhs sixty one thousand three hundred and fifty only)

The appellants will be entitled to a total compensation of Rs.2,61,350/- (Rupees Two lakhs sixty one thousand three hundred and fifty only). The enhanced amount will carry 9% interest per annum. The Insurance Company is directed to deposit the entire amount of compensation within a period of

three months, less the amount already deposited before the Tribunal .

The appeal is allowed accordingly. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge