

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

MACA.No. 3078 of 2014 ()

AGAINST THE AWARD IN OPMV 1336/2005 of SPL.COURT FOR EC ACT CASES
& MACT,TSR DATED 20-08-2014

APPELLANT/PETITIONER:

DILEEPPKUMAR, AGED 56 YEARS
S/O.BALAKRISHNAN NAIR, PUZHANKARA HOUSE
P.O.KUNDANNOOR, WADAKKANCHERY, THRISSUR DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

1. BINU K MATHEW,
DIRECTOR POABSON GRANITE PRODUCTS (P) LTD.
WEST OTHERA P.O., THIRUVALLA, KOTTAYAM DISTRICT
PIN - 689 101.

2. SREEKUMAR @ MADHU,
S/O.KUTTANPILLAI, KARAYAL KOVILAKATHU HOUSE
WEST OTHERA, KUTTOR, THIRUVALLA
KOTTAYAM DISTRICT, PIN - 689 101.

3. THE NEW INDIA ASSURANCE CO. LTD.,
KOTTAYAM, PIN - 686 001.

R3 BY ADV. SRI.K.C.SANTHOSHKUMAR
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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

MACA No.3078 OF 2014

Dated this the 7th day of January, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident. The KSRTC bus in which he was travelling collided with a tipper lorry and he sustained very severe injuries as follows :

“ Open fracture right leg and mild contusion and small abrasion on the frontal region. Compound fracture right tibia and abrasion middle and right side of forehead.”

2. The appellant was immediately admitted to West Fort Hi-Tech Hospital, Thrissur and underwent treatment there for a period from 03/09/2004 and 17/09/2004. Seeing that he sustained Type III open fracture tibia and fracture tibula, he was again hospitalized for a period of six days. The appellant was aged 46 years at the time of the accident and was working as a Mechanical Engineer. Claiming that he

was earning a sum of Rs.10,000/- per month on being engaged in 'A and B Toolers', Cochin, he claimed compensation to the tune of Rs.3,37,000/-.

3. The Tribunal awarded a sum of Rs.2,57,730/- reckoning his monthly income as Rs.6,000/-. The appellant was technically qualified with Diploma in Mechanical Engineering, as seen from Ext.A14 certificate issued by the State Board of Technical Education. This appeal is filed seeking enhancement of compensation on the ground that the amount awarded under various heads are thoroughly inadequate.

4. We heard the learned counsel on either side.

5. It is seen from the certificate Ext.A15 that the salary of the appellant was Rs.10,000/-. But the Tribunal did not accept the same. In view of the fact that the appellant was a technically qualified hand with Diploma in Mechanical Engineering, we deem it fit to fix the monthly income @ Rs.8,000/-. Therefore, the amount awarded towards loss of earnings has to be enhanced @ Rs.8,000/- for a period of four months which will come to Rs.32,000/-.

6. It is seen that the appellant had been hospitalised for a period of 20 days. Therefore, the bystander's expenses has also be enhanced @ Rs.200/- per day which will come to Rs.4,000/-. The amount awarded towards pain and suffering is only Rs.20,000/-. Having regard to the grievous nature of the injuries and the period of treatment on account of which he lost his employment, we deem it fit to award a sum of Rs.40,000/- towards pain and suffering. Similarly, towards loss of enjoyment in life, the Tribunal has awarded only a sum of Rs.5,000/-. We enhance the same to Rs.25,000/-. The disability certificate shows that the disability sustained by the appellant is 19.9%. For the purpose of compensation, we reckon the same as 20%. The compensation for disability is recalculated reckoning the income @ Rs.8,000/- i.e. Rs.249,600/- (Rs.8000 x12x 13 x 20%). For disfigurement also, we find it necessary to enhance the compensation to Rs.15,000/-.

7. The award of the Tribunal is accordingly modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transportation charges	2000
Damage to clothing and articles	250
Bystander expenses for 11 days	4000
Extra nourishment charges	1000
Medical bills	13564.97
Pain and suffering	40000
Loss of earning for a period of 4 months	32000
Compensation for loss of convenience and enjoyment in life	25000
Compensation for disability	249600
Compensation for disfiguration	15000
Total	382414.97 Rounded off to ₹ 382415/- (Rupees three lakhs eighty two thousand four hundred fifteen only)

8. The appellant will be entitled to interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the

amount less the amount already deposited before the Tribunal within a period of three months from the date of receipt of a copy of this judgment.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.