

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. 2570 of 2010 ()

AGAINST THE AWARD IN OPMV 570/2003 of M.A.C.T., THALASSERY DATED
30-01-2010

APPELLANT/PETITIONER

BABY JOHN, S/O.JOHN
AGED 26 YEARS, PULINGOME VILLAGE, P.O.EDAVARAMBA
VIA CHERUPUZHA, KANNUR DIST

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENTS/RESPONDENTS:

1. KIZHAKKE VEETIL SABIN, 23 YEARS,
S/O.K.V.NARAYANAN, NEAR PERINGOME POLICE STATION
P.O.PERINGOME, KANNUR DIST. 670 571

2. E.P.VINOD,S/O.KANARAN,
EDAVANA PUTHIYA VEETIL, KOTTAKKUNNU, NAREEKAMVALLY
P.O.CHERUPUZHA, KANNUR DIST 670 571 (DELETED)

3. KIZHAKKE VEETIL SAJI,
25 YEARS, S/O.K.V.NARAYANAN
NEAR PERINGOME POLICE STATION, P.O.PERINGOME
KANNUR DISTRICT 670 571

4. THE ORIENTAL INSURANCE COMPANY LTD,
BRANCH OFFICE, MARINA SHOPPING CENTRE
NATIONAL HIGH WAY, TALIPARAMBA 670 141

* RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY VIDE ORDER
DATED 4.4.2014 IN I.A.NO.610/2014 IN M.A.C.ANO.2570/2010.

R4 BY ADV. SRI.MATHEWS JACOB (SR.)
R4 BY ADV. SRI.P.JACOB MATHEW
R1,R3 BY ADV. SRI.T.V.JAYAKUMAR NAMBOODIRI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 07-01-2015 ALONG WITH MACA NO.2575/2010, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.Nos.2570 & 2575 OF 2010

Dated this the 7th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

Appellants in both the appeals are respectively the husband and wife who were injured in an accident on 4.8.2002 along with their child while they were waiting for a bus at Cherupuzha. The offending vehicle, a bus bearing Reg.No.KL 10 G 2673, hit against them and serious injuries have been caused. Altogether three applications were filed namely for compensation for the husband, the appellant in M.A.C.A.No.2570/2010 and for the appellant in M.A.C.A No.2575/2010 and for the child.

2. Firstly, we will take M.A.C.A.No.2570/2010. Going by the details discussed by the Tribunal, he was aged 24 at the time of the accident. He claimed that he was a Sales Executive and was earning Rs.4,500/- per month. He was examined as PW1 and at that point of time, he submitted that he was employed at FBM Exports,Kannur

Raod, Calicut. Ext.A4 is the document produced to show that he was earning Rs.8,400/-. The Tribunal did not accept it in the light of the fact that in the claim petition he claimed his job as Sales Executive and the monthly income was also claimed only at Rs.4,500/-. It was found that Ext.A4 has not been proved by examining anybody and therefore the Tribunal fixed the monthly income at Rs.3,000/-.

3. The appellant was admitted in the Academy of Medical Sciences Hospital, Pariyaram and Ext.A2 is the accident register cum wound certificate. He sustained various injuries. He was admitted subsequently in the MIMS Hospital, Kozhikode on 20.8.2002 and was discharged on 30.9.2002 which is supported by Ext.A6 discharge summary. Therein it is shown that he sustained Gr. III fracture of left femur. Again he was admitted in the hospital on 22.10.2002 and was discharged on 26.10.2002 as seen from Ext.A7. Ext.A8 evidences his admission later on 1.11.2002 and discharge on 5.11.2002. Again he was admitted on 17.6.2003 and was discharged on 19.6.2003 which is supported by Ext.A9 discharge summary. Thus he was hospitalised for a total period of 54 days on different occasions and underwent two

surgeries.

4. He was directed for a review after six weeks. The total claim towards medical expenses is Rs.102036/- and after excluding taxi bills and canteen bills, the Tribunal granted Rs.95,000/-.

5. Ext.X1 is the disability certificate issued by Academy of Medical Sciences Hospital, Pariyaram in which 10% disability has been shown as the whole body disability.

6. The learned counsel for the appellant argued that the monthly income claimed at Rs.8,500/- should have been accepted by the Tribunal, whereas the learned counsel for the Insurance Company pointed out that the said claim is not proved by any documentary evidence. Initially he claimed Rs.4,500/- as the monthly income. According to him, he was working as a Sales Executive. The question is whether the income shown as Rs.4,500/- or as claimed as Rs.8,500/- will have to be accepted. The Tribunal fixed it at Rs.3,000/-. We are of the view that we will be justified in taking Rs.4,000/- as the reasonable monthly income in the facts and circumstances of the case.

7. Towards pain and suffering, the Tribunal has granted only

Rs.20,000/-. He was treated for a total period of 54 days on different occasions and had undergone two surgeries also. Thereafter he was directed to appear for a review and the outpatient treatment continued. It is explained by the learned counsel for the appellant that he is suffering from Ankylosis now and he relied upon the disability certificate dated 21.11.2010 issued by the Medical Board of the Govt. Taluk Hospital, Payyannur. Since the same is not marked in evidence, we will not be justified in accepting the same. Therein the disability is shown as 50% because of near total Ankylosis. For the present, we will be justified in adopting the disability as reflected in Ext.X1 alone. In view of the disability it is clear that he will be having loss of amenities and enjoyment of life also for which no amount has been granted by the Tribunal. Towards bystander's expenses, Rs.5,400/- has been granted by taking Rs.100/- per day. We will be justified in adopting Rs.150/- per day for bystander's expenses.

8. It is seen that an amount of Rs.102036/- was claimed towards medical expenses as per Ext.A3 and A5 series. The Tribunal found that Ext.A5 series are canteen bills and bystander's expenses for

a sum of Rs.1355/-. But Rs.95,000/- alone has been granted. We refix the amount at Rs.1,00,000/- towards medical expenses.

9. Going by the details of the treatment, he had undergone surgery lastly on 17.6.2003. Therefore we will be justified in granting partial loss of earnings for a period of ten months @ Rs.4,000/-. Thus, the compensation is recomputed in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Bystanders expenses	8100
Medical expenses	100000
Disability	86400 (4000 x 12 x 18 x 10%)
Pain and suffering	40000
Partial loss of earnings for 10 months	40000
Extra nourishment	15000
Loss of amenities and enjoyment of life	100000
Total	389500 (Rupees three lakhs eighty nine thousand five hundred only)

10. Next we will consider M.A.C.A.No.2575/2010 which is filed by the wife of the appellant in M.A.C.A.No.2570/2010. Going by

the details discussed by the Tribunal, she had fracture of clavicle and medial malleolus right and ischio pubic rami etc. and the treatment is clear from Ext.A11 discharge card. She was hospitalized for a period of 12 days at the first instance. Thereafter she was admitted on 13.1.2005 and discharged on 17.1.2005 for implant extraction. The total period of inpatient treatment is 19 days. After implant extraction, she was advised to take rest for six weeks which is evident from Ext.A12.

11. The Tribunal has awarded compensation in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of amenities	10000
Bystander's expenses	1900
Medical expenses	20000
Pain and suffering	18000
Extra nourishment and review	7000
Loss of earning for 3 months	7500
Total	64400

12. The learned counsel for the appellant submitted that a reasonable compensation ought to have been granted by the Tribunal.

The learned counsel for the respondent pointed out that there is no disability as far as the said appellant is concerned. We are of the view that the bystander's expenses can be granted @ Rs.150/- per day. For pain and suffering, Rs.18,000/- has been granted and in the light of the fact that she had suffered fracture and was subjected to various procedures including implant placement which was later extracted as evident from Ext.A12 and she was again under bed rest for six weeks as evident from Ext.A12, we grant an amount of Rs.35,000/- towards pain and suffering. Towards partial loss of earnings, the Tribunal has granted Rs.7,500/- and considering the fact that she was engaged in tailoring job which she would not have been continued during the period of treatment and for a reasonable time thereafter, we fix an amount of Rs.12,000/-. Thus the total compensation will be as follows :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of amenities	10000
Bystander's expenses	2850 (19 x 150)
Medical expenses	20000

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Pain and suffering	35000
Extra nourishment and review	7000
Loss of earning for 3 months	12000
Total	86850 (Rupees eighty six thousand eighty hundred fifty only)

13. The amount awarded in both cases will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited, if any, before the Tribunal within a period of three months from the date of receipt of a copy of this judgment.

Both the appeals are allowed accordingly. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.