

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 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

MACA.No. 3164 of 2014 ()

AGAINST THE AWARD IN OPMV 544/2010 of M.A.C.T, THODUPUZHA
DATED 04-07-2014

APPELLANT/PETITIONER:

ANSE,
W/O.JOSEPH, MOOLAYIL HOUSE, THOPPIPALA KARA
AYYAPPANKOVIL VILLAGE.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENT(S)/RESPONDENTS:

1. SOMAN,
S/O.KARUNAKARAN, KURIANTHARA HOUSE, MATTAPPALLYBHAGAM
THOPPIPALA KARA, AYYAPPANKOVIL VILLAGE
KANCHIYAR POST-686 001.

2. THE NEW INDIA ASSURANCE COMPANY LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER,
KOTTAYAM-686001.

R2 BY ADV. SRI.M.PREMCHAND
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.3164 of 2014

Dated this the 10th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant is the injured, who claims compensation for the injuries sustained in an accident which occurred on 26.03.2010 at about 12.45 p.m while she was travelling in an autorickshaw bearing Reg.No.KL-37-8750, which was being driven by the 1st respondent from a place called Thoppipala to Swaraj. The accident occurred near Swaraj temple when the autorickshaw hit on the rear side of a mini lorry parked on the road side and she sustained injuries.

2. The injury sustained by the appellant are Fracture (Lt) 2nd to 8th ribs, (Lt) lung contusion T minimal (Lt) Hemothorax, comminuted fracture of left scapula including glenoid with displacement of fragments and loss of congruity of joint, fracture of lateral end of left clavicle, fracture left acromion.

3. The appellant had undergone treatment from 26.03.2010 to 30.03.2010 at St.Johns Hospital, Kattappana and

she continued treatment as an outpatient for more than 6 months.

4. It is submitted that she had to continue the treatment for a period of 6 months. For the purpose of assessing compensation, even though she was a house wife, as against the claim of Rs.4,500/-, the Tribunal had adopted notional income at Rs.4,000/-, which does not require any enhancement.

5. The learned counsel for the appellant submitted that by not granting of any amount for compensation towards permanent disability, the Tribunal has erred in law. It is submitted that, on a finding that the appellant being a house wife the alleged disability will not affect her earning power, nothing has been granted towards permanent disability. It is submitted by the learned counsel for the appellant in the light of the fact that the disability certificate shows 15% disability, the same is liable to be compensated on the well settled principles of law.

7. We heard the learned counsel for the Insurance Company also. It is also submitted by the learned counsel for the appellant that what is granted by the Tribunal is only towards loss of amenities to the tune of Rs.50,000/-.

8. We have considered the rival submissions. In para.19 the Tribunal has discussed the evidence in the matter. The disability certificate issued by the Medical Board of the Taluk Head Quarters Hospital, Thodupuzha shows permanent disability as 15%. It is also stated that she has got restricted movement of left shoulder joint with abduction 90°. There is wasting of muscles of left shoulder joint also.

9. As far as the percentage of disability is concerned, since the disability certificate is issued by the Medical Board of the Taluk Head Quarters Hospital, Thodupuzha, even without examination by an expert, this Court can accept the certificate, especially no other challenge is there of its contents.

10. We cannot accept the view taken by the Tribunal that merely because she is not an earning member, no amount need be granted. It is well settled principle of law that injury leading to disability is liable to be compensated and in that view of the matter, the finding that her personal life has not been adversely affected by the disability and which in turn has not affected her earning power, cannot be accepted. In this regard we rely upon the judgment of the Supreme Court in **K.Suresh v. New India Assurance Co. Ltd.** [2012 ACJ 2694], wherein legal principles

have been discussed.

11. Therefore the compensation will have to be assessed towards the disability. She was aged 34 years at the time of the accident and therefore the multiplier will be 16. Therefore the disability compensation will be Rs.4000X12X15/100X16, which will come to Rs.1,15,200/-.

12. But at the same time for loss of amenities Rs.50,000/- has been granted which we reduce to Rs.30,000/-. Therefore the total compensation is computed in the following manner:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Loss of earning	Rs. 24,000.00
2	Pain and suffering	Rs. 25,000.00
3	Bystanders expense	Rs. 1,000.00
4	Extra nourishment	Rs. 1,000.00
5	Transportation charges	Rs. 2,000.00
6	Damage to clothing	Rs. 500.00
7	Medical expenses	Rs. 14,455.00
8	Loss of amenities	Rs. 30,000.00
9	Injury disability	Rs.1,15,200.00
	TOTAL	Rs.2,13,155.00 round off to Rs.2,13,160.00

(Rupees Two lakhs thirteen thousand one hundred and sixty only)

The appellant will be entitled to a total compensation of

Rs.2,13,160/- (Rupees Two lakhs thirteen thousand one hundred and sixty only), which will carry interest @9% per annum from the date of petition. The respondent is given 3 months' time to deposit the amount.

The appeal is allowed to the above extent. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge