IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

MACA.No. 1670 of 2008 ( )

AGAINST THE AWARD IN OPMV 1107/2005 of M.A.C.T OTTAPPALAM DATED 14-05-2008

APPELLANT/PETITIONER:

DEVADAS, 40 YEARS, S/O.RAMAN
CHEMBIPARAMBIL HOUSE, KOTHAKULAM, KANIYAMUTTAM
VALAPPAD BEACH

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENTS:
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1. ABDUL SALAM, S/O.KUNJIVAVA
KADAVIL HOUSE, NEAR VALAPPAD, MARKET, VALAPPAD
THRISSUR

2. RAJAN, S/O.CHEERANKUNJI
KIZHAKKEVEETTIL HOUSE, KAIPAMANGALAM,
THRISSUR (DELETED)

3. THE NEW INDIA INSURANCE CO.LTD.
S.S.N.SHOPPING COMPLEX., TEMPLE ROAD, NATTIKA PO.
THRIPRAYAR 680 566, POLICY NO.760306/31/03/05918
VALID FROM 14.11/03 TO 13.11.2004

R3 BY ADV. SRI.PMM.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.1670 OF 2008

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Dated this the 23th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

Mainly it is a case where the appellant who was involved in an accident while travelling as a pillion rider is aggrieved by the inadequacy of the compensation. The main complaint is regarding the improper assessment of percentage of disability, non-grant of amount towards loss of amenities and inadequate compensation granted on other heads also.

2. The appellant was travelling as a pillion rider on 6.5.2004 and the accident occurred at Valappadu at about 6.30 p.m. He was working in a hotel earning ₹4,500/- per month and was aged 40 at the time of the accident. The period of treatment going by the evidence is a total number of 78 days. The same is supported by Ext.A10 and Ext.A11 series discharge cards. Ext.A11 series are the discharge cards

issued from West Fort Hospital, Thrissur wherein he was initially admitted for treatment. The period of admissions are from 6.5.2004 to 14.06.2004, 1.8.2004 to 19.8.2004 and 6.6.2005 to 10.6.2005. Thereafter he was admitted in the Government Hospital, Irinjalakkuda and was treated there from 12.6.2005 to 25.6.2005. The injuries he had sustained and treatment procedures undertaken are clear from Ext.A9 certificate issued from West Fort Hospital, Thrissur, as per which, he had suffered Type III A open fracture, BB left leg. He was initially treated with wound debridement and external fixation application followed by IL/M nailing on 2.8.2004. The implant was removed on 6.6.2005. He was examined as PW1 and the Doctor who issued Ext.A12 was examined as PW2. Before going into Ext.A12, a reference to the contents of Ext.A10 is required to understand the position of the appellant after the completion of treatment. It shows delayed union of fracture tibia and old ORIF.

3. Going by the evidence of PW2, he has noted down the following aspects:

> Nagging pain on fracture site with recurrent attach of oozing from small area, numbness of dorsum of (L) foot, pain and instability (L) knee, grade III ACL injury, loss of stability is 30%, (L) ankle has loss of rom 17%, wasting of calf muscle 3 cm. with loss of power - Gr.IV an wasting of thigh muscle by 4 cm. with loss of power Gr.IV and there is over all loss of power is 20%.

4. The permanent disability assessed is 22.4%. As regards the permanent disability assessed, the split up details show that for infection and pain, the doctor has assessed 3% disability and for others separate assessments have been made.

5. The learned counsel for the Insurance Company submits that the disability is not to the whole body and therefore the percentage of disability assessed by the Tribunal at 7% is correct. We have gone through the details of the certificate as well as the evidence of PWs 1 and 2. It is a case where he had to suffer wasting of muscles as well as fracture to the limbs, which have resulted in loss of strength also. After considering various aspects, we fix the percentage of disability at 12%

for the purpose of assessing compensation. Even though the learned counsel for the appellant submits that the functional disability will be more, according to us, the disability assessed at 12% will be justified. Therefore now we proceed to assess the compensation.

6. As monthly income what is claimed is only ₹4,500/- which according to us, is justifiable and it is not a exorbitant rate as the accident is of the year 2004. As far as bystander's expenses are concerned, we fix it @ ₹200/- per day for 78 days ((₹15,600/-). The injuries have resulted in prolonged treatment and the loss of income has been calculated for ten months by the Tribunal which cannot be said to be incorrect in the light of the fact that there was malunion of tibia. Therefore we grant an amount of ₹45,000/- for loss of income for a period of ten months. The Tribunal has granted ₹10,000/- for transportation, extra nourishment and damage to clothing. Evidently, it had to be given separately. Accordingly, we award ₹8,000/- for transportation, ₹5,000/- for extra nourishment and ₹1,500/- for damage to clothing.

7. It is evident that for pain and suffering, the quantum

assessed is totally inadequate. Considering the nature of the injuries, its seriousness, treatment procedures and the period of treatment, we fix an amount of ₹40,000/- towards pain an suffering. Lastly, we have noted that no amount has been granted towards loss of amenities and enjoyment of life. It is clear that the disability will clearly deprive him of his normal avocations to an extent. The Doctor's opinion that the over all loss of power of 20% will really reflect on his normal activities also. Therefore, we fix an amount of ₹40,000/- towards loss of amenities and enjoyment of life.

8. Accordingly, the total compensation is refixed in the following manner :

Head of claim	***Amount Awarded in rupees***
Medical expenses	70800
Disability	90720 (4500 x 12 x 14 x 12%)
Bystander's expenses	15600
Partial loss of income for 10 months	45000
Transportation	8000
Extra nourishment	5000
Damage to clothing	1500
Pain and suffering	40000

Head of claim	***Amount Awarded in rupees***
Loss of amenities and enjoyment of life	40000
Total	316620 Rounded off to ₹ 3,16,600/- (Rupees three lakhs sixteen thousand six hundred only)

9. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company has been found liable by the Tribunal to meet the liability and we uphold the same. There will be a direction to the Insurance Company to deposit the amount within three months and we permit the appellant to withdraw the amount also.

10. The appellant will have to pay additional court fee in tune with the compensation granted by this Court. In the light of the judgment of the Supreme Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC),** there is no legal embargo in granting the amount arrived at and the Tribunal will recover the amount towards additional court fee after the amount is deposited by the Insurance Company.

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

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

sv.