

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 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

MACA.No. 2642 of 2010 ()

AGAINST THE AWARD IN OPMV 354/2004 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL,PUNALUR DATED 16-09-2010

APPELLANT/PETITIONER:

RADHAKRISHNA KURUP

S/O. NARAYANA PILLAI, RAJESH BHAVAN, THUMBODE
BHARATHEEPURAM.P.O, ANCHAL, PATHANAPURAM TALUK
KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS/RESPONDENTS:

1. D.MADHUKUMAR & OTHERS
MOHANA BHAVAN, NETTAYAM, NEDIYARA.P.O
ANCHAL, KOLLAM DISTRICT-691306

*2. V. SHAJI, S/O. BHAVANI,
NARAYANA VILASAM, EDAYANGOOR, KOTTARAKKARA
KOLLAM DISTRICT. -DELETED

3. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE COMPANY LTD., KOLLAM.

*(RESPONDENT NO.2 IS DELETED FROM PARTY ARRAY AT THE RISK OF
THE APPELLANT AS PER ORDER DATED 11.3.2015 IN I.A. 877/15 IN
M.A.C.A.2642/2010).

R,R1 BY ADV. SRI.V.A.SHAJI
R,R1 BY ADV. SRI.V.S.AFSAL KHAN
R3 BY ADV. SMT.DEEPA GEORGE
R BY SMT.DEEPA GEORGE B/O
R BY SRI.M.A.GEORGE B/O

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A No.2642 of 2010

Dated this the 24th day of March, 2015

JUDGMENT

Asha , J.,

The appellant is the injured in a motor vehicle accident which occurred on 5.4.2003, while he was travelling on a motor cycle from Punalur to Bharatheepuram. When he reached Tholicode junction, he was knocked down by a bus which came in the opposite direction causing very serious injuries to him. He was taken to Taluk Hospital, Punalur from where he was referred to Medical College Hospital, Thiruvananthapuram. He underwent treatment there and ultimately, his disability was assessed as 21%.

2. The claim petition was filed compensation of Rs. 6 lakhs. The Tribunal has awarded a sum of Rs. 1,06,700/-. This appeal is filed seeking enhancement of compensation complaining inadequacy on almost all the heads of claim.

3. We heard learned counsel on both sides. Learned counsel

for the appellant submitted that the income reckoned in the case of the appellant is too low; entire medical expenses are not granted even though bills were produced; compensation for permanent disability is not assessed properly; the amount awarded for pain and suffering is very meager, etc. Learned counsel for the Insurance Company pointed out that the Doctor who issued disability certificate was not examined and hence the disability certificate cannot be accepted. It is also contended that the compensation cannot be assessed adopting the multiplier method since the appellant continued in service without any loss in salary and the method adopted by the Tribunal was correct.

4. It is seen that the appellant sustained the following injuries :

- i) Contusion 3x3 all over (L) side forehead.
- ii) Abrasion (3 in numbers) 2x1 cm (R) leg.
- Iii) Clinically, fracture both bones (R) leg.
- iv) Fistal pulsarous feble (R) leg.

5. He underwent treatment in Medical College Hospital, Thiruvananthapuram as inpatient initially for the period from 6.4.2009 to 30.4.2003. Later he was admitted in the hospital on

7.5.2003 and was discharged on 2.6.2003; again he was admitted on 20.8.2003 and discharged on 6.9.2003 and thereafter he was hospitalised for the period from 29.10.2003 to 1.12.2003. It is seen that he underwent inpatient treatment for a period of 100 days. The records relating to the treatment show that he sustained compound fracture of both bones of right leg and he has undergone surgeries and procedures for nail removal. Apart from inpatient treatment, he had to undergo regular out patient treatment up to 10.2.2007, due to osteomyelitis, consequent to the accident which occurred on 5.4.2003.

6. In the disability certificate issued on 23.8.2005, which was marked as Ext.A14 by the tribunal. The observations are as follows:

- 1. Evidence of malunited fracture both bones of (Rt) leg with about 15 degree lateral angulation.*
- 2. Shortening of (Rt) leg 2 cms.*
- 3. Post traumatic stiffness with limitation of terminal 20 degree flexion of (Rt) knee.*
- 4. Wasting of (Rt) calf muscles of 2.5cms.*
- 5. Chronic osteomyelitis (Rt) tibia with persistent discharging of sinus involving its mid shaft region.*
- 6. Irregular ugly looking adherent scar of (rt) leg.*

- 7. Difficulty in squatting & in sitting cross legged.*
- 8. Subjective symptoms of pain (Rt) leg on prolonged standing, walking and while climbing stairs.*
- 9. Post traumatic sequel with stiffness of (Rt) ankle - limitation of terminal dorsiflexion.*

7. After noting the injuries, it is stated that he underwent various surgical procedures like nail removal, control of infection, etc. The temporary disability has been assessed as 100% from 5.4.2003 to 4.9.2003; temporary disability of 50% from 5.9.2003 to another nine months and permanent partial disability as 21%.

8. The Tribunal reckoned his disability only as 12% on the ground that the Doctor who issued the disability certificate was not examined. It is pointed out that , the expenses towards treatment, transportation, etc, are not granted as per the bills produced. Towards transportation, the Tribunal granted only Rs. 25,00/-, despite production of bills and the fact that there was at least 19 reviews in the hospital. It has been pointed out that appellant had availed leave as per Ext.A29 G.O. Dated 20.8.2004. But the Tribunal had awarded compensation towards loss of earning, reckoning a lower rate even though the salary

certificate produced evidenced that he was drawing Rs. 6807/- per month.

9. The Tribunal awarded a sum of Rs.46910/- only towards loss of earnings for 9 months. It is that appellant has been working as an aided School Teacher. He was aged 31 and was drawing salary of Rs. 6807/- at the time of the accident. Therefore, for a period of 9 months, the loss of earning will come to Rs. 61,263/- and we enhance the same to Rs. 61263/-. It is seen that the appellant had to undertake 19 visits to the hospital. The Tribunal did not accept the way bills produced, on the ground that the same was not proved. From the records it cannot be disputed that the appellant had to undertake several visits to the hospital right from the date of accident in 2003. Therefore reckoning a sum of of Rs. 500/- for a visit, we award a sum of Rs.9,500/- for the 19 visits. As against the claim for Rs.26093/- towards medical expenses Tribunal has granted only a sum of Rs.5620/-, on the ground that name of the patient or doctor or seal of hospital are not seen in the bills. We find that appellant has undergone treatment from 2003 to 2007 almost

continuously, which has definitely incurred expenditure. There are bills also for the treatment he was undergoing. We therefore enhance the compensation under this head to Rs. 15,000/- towards the treatment already undergone. The disability was fixed by the Tribunal as 12% as against the 21% certified in Ext.14. The particulars of injuries sustained, treatment undergone and the difficulties faced by the appellant are explained in Ext A14. There is no evidence to the contrary. Moreover it is seen that the appellant had to continue on treatment for about 4 years almost continuously. Therefore we do not find any reason for not accepting the percentage of disability as 21% as assessed in Ext A14. As the appellant was aged 31 years and was drawing salary at the rate of Rs.6807/- per month, the compensation towards disability is to be arrived at -Rs. $6807 \times 15 \times 12 \times 21 / 100 =$ Rs. 2,57,304/-. The learned Counsel for the respondent vehemently opposed the assessment of compensation based on the salary drawn by him at the relevant time and the multiplier based on the age at the time of accident and argued that a notional income for the period after retirement alone should be taken as done by

the Tribunal, since the accident did not cause any reduction in salary of the appellant. But we find that the appellant had to undergo the ordeal of treatment on account of the injuries he sustained in the accident. He is compelled to work with all these discomforts and disabilities. He cannot be equated with a normal employee who did not have the misfortune of facing such an accident. He has to be compensated for the injuries he suffered and continues to suffer. In the light of a series of judgments of the apex court including ***Suresh kumar Vs New India Assurance Company & others*** reported in [JT 2012(10) SC 484] and our recent judgment in MACA 721/2012 & Cross Objection 3/2013, appellant should be granted compensation towards the disability he suffered, even if it did not affect his earnings while he is in service. Even in such cases the proper method to be adopted is based on the income as well as multiplier based on age as on the date of accident.

10. The Tribunal awarded Rs. 15,000/- for pain and suffering. Having regard to the discomfort and inconvenience he would have experienced, we award a sum of Rs. 50,000/- towards pain

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and suffering. On account of the disability occurred, the appellant will not be in a position to enjoy the normal amenities of life as he had been enjoying before the accident, we award a sum of Rs. 50,000/- towards loss of amenities. Under the head of bystander expenses, the Tribunal awarded Rs. 6150/- at the rate of Rs. 75/- per day. We enhance the same at the rate of Rs.200/- for a period of 100 days which will come to Rs. 20000/-. Towards extra nourishment, the Tribunal has granted only Rs. 4100/-. We enhance the same to Rs. 5000/- From the disability certificate as well as the treatment records, it is seen that future treatment will be necessary for the appellant. Towards future treatment we award a sum of Rs. 15,000/-. Accordingly, we modify the award as follows:-

Sl.No.	Heads of claims	Amt.awarded	Amt.modified
1	Loss of earning	46910	61263
2	Loss of amenities		50000
3	Transportation to hospital and back	2500	9500
4	Extra nourishment	4100	5000
5	Damage to clothing and other articles	500	500
6	Cost of medicines and bystander's expenses	5620 6150	15000 20000
7	Compensation for pain and suffering	15000	50000

Sl.No.	Heads of claims	Amt.awarded	Amt.modified
8	Compensation for continuing permanent disability and compensation for the loss of earning power	25920	257304
9	Future treatment expenses		15000
	TOTAL	106700	483567

11. Thus the appellant will be entitled to a total compensation of Rs.4,83,567/- only. The enhanced compensation will carry interest at the rate of 9% p.a from the date of petition.

12. The Insurance shall deposit the amount less the amount already deposited within a period of three months .

The appeal is allowed accordingly. The parties will suffer their costs in this appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge