

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

MACA.No. 3033 of 2009 ()

AGAINST THE AWARD IN OPMV 1098/2005 of MACT VADAKARA
DATED 19-08-2008

APPELLANT/PETITIONER:

KADIYA, AGED 52 YEARS,
D/O.AMMAD, KOLLAMKANDIYIL HOUSE, KUMANGOD,
P.O.NADAPURAM, VADAKARA.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S) /RESPONDENTS:

1. ABDUL NAZAR M.K
S/O.ALIYUMMA,
MAMBILIKUNIYIL HOUSE, PONMERI PARAMBIL P.O., AYANCHERI
VADAKARA, KOZHIKODE.

2. UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE NO.11, P.B.NO.192, SEEMA TOWERS
MAVOOR ROAD, KOZHIKODE.

R,R2 BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.3033 of 2009-C

Dated this the 27th day of March, 2015

JUDGMENT

Asha, J.

The appellant is the injured in a motor vehicle accident which occurred on 18.07.2005 on being hit by a motorcycle while she was walking through the road. She sustained the following injuries:

- “1. Closed communitted fracture of right femur.
2. Closed communitted fracture of both bones of left leg.
3. Lacerated wound on the forehead.
4. Abrasion on face.
5. Tenderness on left hip.
6. Superficial abrasion on the chin and forehead.”

She underwent inpatient treatment for a period of 23 days. Her disability was assessed as 16%.

2. The claim petition was filed seeking compensation of Rs.3 lakhs. The Tribunal awarded a sum of Rs.1,92,397/-. This appeal is filed seeking enhancement in compensation.

3. We heard the learned counsel appearing on either side. The Tribunal has awarded a sum of Rs.25,000/- towards

pain and suffering and a sum of Rs.37,440/- towards permanent disability. Her monthly income was reckoned as Rs.1,500/-. The appellant had been working as a Coolie. It is pointed out that she has become unable to undertake any work subsequent to the accident. Moreover she was completely incapacitated to do any work for a period of two years. The Tribunal awarded compensation towards loss of earning for a period of two years @ Rs.1,500/-.

4. As there is no dispute that the appellant was a Coolie and she suffered the disability as found in Ext.X1 certificate, we are of the view that the income fixed by the Tribunal @ Rs.1,500/- is too low. We reckon the same as Rs.3,000/-. She was aged 48 years at the time of the accident. Therefore the proper multiplier is 13 and the compensation under the head of disability will come to $\text{Rs.}3000 \times 12 \times 13 \times 16 / 100 = \text{Rs.}74,880/-$. Towards loss of earning, she will be entitled to a sum of Rs.72,000/-. Towards pain and sufferings, she was granted Rs.25,000/- by the Tribunal. In view of the grievous nature of the injuries suffered and the prolonged treatment undergone by her as also the discomfort and inconvenience suffered by her during this period, we enhance the same to Rs.50,000/-. The

Tribunal has awarded a sum of Rs.10,000/- towards mental shock and inconvenience. We convert the same as compensation under the head of loss of amenities and enjoyment of life and enhance the same to Rs.20,000/-, in view of the fact that she will not be in a position to enjoy the normal amenities of life subsequent to the accident. The Tribunal has awarded Rs.4,600/- towards the bystander's expenses and extra nourishment. In view of the fact that the appellant had to undergo treatment for a period of two years almost continuously, we award a sum of Rs.5,000/- separately towards extra nourishment and Rs.4,600/- towards bystander's expenses.

5. Accordingly the award passed by the Tribunal is modified as follows:

<i>Sl.No.</i>	<i>Description</i>	<i>Amt.</i>
1	Medical and miscellaneous expenses	Rs.14,100.00
2	Bystander's expenses	Rs. 4,600.00
3	Extra nourishment	Rs. 5,000.00
3	Transportation to hospital	Rs. 5,000.00
4	Loss of enjoyment and amenities in life	Rs. 20,000.00
	Compensation for pain and suffering	Rs. 50,000.00
5	Loss of earning(Rs.3,000X24months)	Rs. 72,000.00
6	Medical expenses	Rs. 74,357.01
7	Compensation for continuing disability	Rs. 74,880.00

<i>Sl.No.</i>	<i>Description</i>	<i>Amt.</i>
	Total	Rs. 3,19,937.00 round off to Rs. 3,19,900.00

[Rupees Three lakhs nineteen thousand nine hundred only]

Hence the appellant is entitled to a total compensation of Rs.3,19,900/- (Rupees Three lakhs nineteen thousand and nine hundred only) and the enhanced amount will carry interest @9% per annum from the date of petition. There will be a direction to the Insurance Company to deposit the amount (less the amount if any already paid) within three months from the date of receipt of a copy of this judgment and on such deposit being made, the claimant can withdraw the amount.

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

Sd/-
T.R.RAMACHANDRAN NAIR
Judge
Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge