IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

MACA.No. 3368 of 2014 ()

AGAINST THE AWARD IN OPMV 1108/2008 of M.A.C.T., THALASSERY DATED 03-07-2014

APPELLANT/PETITIONER:

NOUSHAD.V AGED 32 YEARS
S/O.MUSTHAFA.K, RESIDING AT VENDEKKAN HOUSE
PUTHARIPURAM, PO IRINAVU, KANNUR DISTRICT

BY ADVS.SRI.A.K.SRINIVASAN
SRI.JIMMY GEORGE
SRI.A.S.BENOY

RESPONDENT/3RD RESPONDENT:

M/S THE UNITED INDIA INSURANCE CO LTD
KANNUR 670 001.

BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

\- -

M.A.C.A.No.3368 OF 2014

\- -

Dated this the 19th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the injured claimant. The appellant was aged 26 at the time of the accident and was working as a driver of mini lorry. The accident occurred on 5.6.2007 at about 6.30 p.m. When he was travelling as a pillion rider on a motor cycle bearing Reg.No. KL 13 R 5460 from Irinavu to Payangadi and when they reached near Vellarankal, the offending vehicle, a bus bearing Reg.No.KL-13G/5205 hit the motor cycle and he sustained serious injuries.

2. As against the total claim of ₹20 lakhs, the Tribunal has granted an amount of ₹15,35,000/-. Before us, the learned counsel for the appellant highlighted three aspects. First one is regarding non acceptance of monthly income at ₹6875/- as claimed, which was supported by Ext.A9 document. The second one is the non-grant of adequate amount for transportation since the evidence is to the effect

that he had to be taken to the hospitals at Mangalore for treatment and reviews atleast 30 times and it is submitted that as his right leg had to be amputated, he had to resort to a taxi for travelling and the amount is claimed @ ₹2600/- per trip. It is also submitted that the Tribunal has granted ambulance charge only for travelling once. The third one is regarding future medical expenses, including cost of artificial leg, for which no amount has been granted by the Tribunal.

3. The learned counsel for the Insurance Company submitted that the amount granted under various heads, viz., for pain and suffering, loss of amenities and loss of marriage prospects at ₹2 lakhs and ₹1 lakhs each is on higher side. It is also submitted that as regards transportation charges, there are no bills/vouchers to support his claim and as regards the monthly income also, Ext.A9 has not been properly proved.

4. The evidence will show that the appellant was aged 26 years at the time of the accident and he has sustained following injuries as evident from paragraph 10 of the award :

1) Fracture shaft of right femur

2) Open type 3 C fracture both bone right leg with foot drop.

3) Open book type pelvic fracture

4) Deep perineal lacerated wound right external iliac artery

5) Right leg amputated below knee.”

5. Initially, he was taken to Pariyaram Medical College where he was treated as inpatient from 5.6.2008 to 8.6.2008. Later he was referred to Tejasvini Hospital, Mangalore and he was treated there from 8.6.2007 to 11.08.2007. Again he was admitted there on 29.2.2008 and was discharged on 18.3.2008. Thereafter he was taken to the Went Lock Hospital, Mangalore and admitted there from 11.8.2008 to 20.8.2008. On 20.8.2008 he was admitted in Athena Hospital, Mangalore and was discharged on 22.8.2008.

6. The monthly income claimed is @ ₹..235/- per day for 25 days work. The evidence is to the effect that he took one year for recuperation and to regain health. The treatments undergone are evident from Ext.A4 medical certificate and Ext.A6 series discharge summary and Ext.A10 medical bills. The total amount granted for medical expenses is ₹2,57,900/-.

7. The Tribunal has granted compensation as per the table reproduce below :

Head of claim	***Amount Awarded in rupees***
Loss of income	48000
Pain and suffering	200000
Loss of amenities	100000
Damage to clothing	500
Extra nourishment	6000
Bystander's expense	6600
Medical/Transportation	257900
Disability compensation	816000
Loss of marriage prospects	100000
Total	1535000

8. The disability assessed as per Ext.A1 disability certificate issued by the Medical Board of the Pariyaram Medical College is 36% whole body. His right leg has been amputated below knee. The Tribunal therefore found that there is functional disability at 100%. In this context, the Tribunal has relied upon the judgment of the Apex Court in **Raj Kumar v. Ajay Kumar (2011(1) KLT 620(SC)** and **Jayaprasad v. Rejimon Philip and another (2007(3) ILR 723)**. In that case there was amputation of leg wherein the claimant was employed as a driver and this Court took the view that the functional

disability has to be assessed at 100%.

9. The learned counsel for the Insurance Company has relied upon the decision of the Division Bench of this Court in **Oriental Insurance Company Ltd. v. Jayarajan (2012 (2) KLT 354)** to contend that the total disability with regard to earning capacity is the capacity to do any work and not the incapacity to do the particular job, which the claimant was performing before his incapacitation.

10. As regards the above aspect, we are of the view that the profession of the person concerned will give a clear idea. Therefore, herein as far as a driver is concerned, when there is amputation below knee, his capacity and skill to pursue his avocation as driver will be the relevant factor and therefore in the light of the decision **Jayaprasad v. Rejimon Philip and another (2007(3) ILR 723)**, we find that the Tribunal has correctly assessed the disability at 100%. The desirability or possibility of doing any odd job may not be the conclusive factor as contended by the learned counsel for the Insurance Company. At any rate there is no suggestion in that regard and no evidence is also to that effect. As regards the monthly income claimed, the learned counsel for

the appellant relied on Ext.A9. This a reply given under the RTI Act and the same indicates the assessment of monthly income namely basic pay and allowances under the Minimum Wages Act. Herein the accident occurred in the year 2007. In the light of the decision of the Apex Court in **Minu Rout and another v. Satya Pradyumna Mohapatra and others (2013 (10)SCC 695),** wherein in paragraph 13, the Apex Court has, after considering various materials in that case, found that the Tribunal ought to have taken salary of the driver at ₹6,000/- by taking judicial notice of the fact that the post of a driver is a skilled job. There the accident was in the year 2004.

11. The learned counsel for the appellant further submitted that there should have been a reasonable enhancement of the monthly income considering his future prospects of increase in salary also. Herein the appellant was not under a permanent job and there is no evidence to show his regular nature of work also. We will have to fix up the monthly income by resort to guess work to some extent. We therefore are of the view that in the light of the decision in **Minu Rout and another v. Satya Pradyumna Mohapatra and others (2013 (10)**

<u>SCC 695),</u> we will be justified in accepting the monthly income at ₹.6,000/- for the purpose of assessing compensation.

12. As regards the transportation expenses are concerned, what is claimed is for a long period. In the proof affidavit, he has given certain details. According to him, Ext.A11 alone is the receipt available for payment of ambulance charge on the first day at ₹.2,500/-. According to him, he was treated as inpatient on different occasions, namely four and he had been going to various hospitals atleast 8 times as outpatient. Subsequent reviews, also had to be attended. The expenses involved according to him is ₹2,600/- per day. It is also stated that he had visited Aluva for taking measurement of the artificial leg for which ₹4,500/- has been spent. According to him, as the taxi drivers are not issuing receipts, he could not produce the same.

13. According to the learned counsel for the Insurance Company, since for pain and suffering, ₹2 lakhs has been granted, this Court may consider the said aspect. As far as this item of expenses for transportation is concerned, we will have to make only a reasonable assessment. Of course documentary evidence is lacking as to the

payment. But it is evident that he had been in different hospitals on different occasions. The Tribunal has granted only ₹2,500/- based on one bill. According to us, reasonable amount ought to have been granted by the Tribunal. We therefore grant an amount of ₹30,000/- in total for transportation expenses.

14. As far as disability compensation, the amount will be ₹12,24,000/- (6000 x 12 x 17 x 100%).

15. Lastly it is claimed that the appellant will have to change the artificial leg intermittently and future treatment also may have to be undertaken. It is submitted that in the light of the judgment of the Apex Court in **Dinesh Singh v. Bajaj Allianz General Insurance Co. Ltd (2014 ACJ 1412)** a reasonable amount can be granted by this Court. Therein in paragraph 14, an amount of ₹5 lakhs was awarded by the Tribunal for future medical expenses and the Apex Court has enhanced the same to ₹5,50,000/-. The above amount was fixed in the light of the fact that the appellant therein still requires treatment and has to change his artificial limb as and when required.

16. It is submitted by the learned counsel for the Insurance

Company that as regards requirement of future treatment, there is no evidence. According to the learned counsel, as regards the artificial limb also, for purchasing the same, there is no documentary evidence. It is a matter of common knowledge that he will have to change the artificial limb from time to time atleast for a minimum period of five years each. Even though evidence as regards the purchase of the same is lacking, we will be justified in granting ₹50,000/- towards the said item and for changing artificial limb from time to time in future.

17. Accordingly, we refix the compensation in the following manner :

Head of claim	***Amount Awarded in rupees***
Loss of income	72000
Pain and suffering	200000
Loss of amenities	100000
Damage to clothing	500
Extra nourishment	6000
Bystander's expense	6600
Medical expenses	257900
Transportation	30000
Disability compensation	1224000
Loss of marriage prospects	100000

Head of claim	*Amount Awarded in rupees*
Future treatment including artificial limb	50000
Total	2047000 (Rupees twenty lakhs forty seven thousand only)

18. The learned counsel for the Insurance Company pointed out that the claim has been limited to ₹ 20 lakhs and therefore no amount can be granted above ₹20 lakhs. The learned counsel for the appellant submitted that the original claim was ₹30 lakhs and it was limited to ₹ 20 lakhs because of the difficulty to meet expenses for court fee. But in the light of the judgment of the Apex Court in ***Nagappa v. Gurudayal Singh (2003 (1) KLT 115 (SC)*** and in ***Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)***, there is no restriction for this Court to grant amount over the amount claimed by the appellant, if this Court finds it just and reasonable. Therefore we grant the same. The enhanced compensation will carry interest @ 9% per annum. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment.

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

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

sv.