

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

MACA.No. 1819 of 2008 ()

AGAINST THE AWARD IN OPMV 2270/2003 of M.A.C.T., KOZHIKODE DATED
07-09-2007

APPELLANT/PETITIONER:

MOHAMMED JASEEL (MINOR)
S/O HATHIM
M.P. HOUSE
THIRUVANNUR POST
KOZHIKODE
REP. BY HIS FATHER
HATHIM

BY ADV. SRI.V.KRISHNA MENON

RESPONDENTS/RESPONDENTS:

1. M.N.VINEETHA
W/O MOHANAN
NIVEDHYAM
CHOVVA
KANNUR
2. THE BRANCH MANAGER
NEW INDIA ASSURANCE CO. LTD.
KANNUR

R2 BY ADV. SRI.M.RAJAGOPALAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1819 OF 2008

Dated this the 27th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

In this appeal filed by the injured claimant represented by his father the relief sought for is further enhancement of the amount awarded by the Tribunal.

2. It is a case where he sustained injuries in an accident which occurred on 31.03.2003 at about 1 p.m. While he was travelling in a bus bearing Reg.No. KL-11-K-2277, it was hit by another bus bearing Reg.No.KL-13-J-1179.

3. The boy was studying in fourth standard as is evident from Ext.A4. As a result of the accident, he suffered crush injury and fracture lower 1/3rd of humerus. His right hand below the shoulder was amputated. The Tribunal has granted a total sum of ₹ 2,07,993/- under different heads.

4. Heard the learned counsel on both sides.

5. According to the learned counsel for the appellant, the compensation towards permanent disability, pain and suffering, loss of amenities, enjoyment in life and shortened expectation of life and disfigurement of body are too low. It is submitted that no amount has been granted for future medical expenses.

6. The learned counsel for the Insurance Company submits that the award is just and fair.

7. We find that the Tribunal has not granted any amount towards bystander's expenses in spite of the fact that he was treated as an inpatient for 21 days. We grant an amount of ₹4,200/- towards bystander's expenses @ ₹ 200/- per day. The Tribunal has awarded ₹2,000/- towards hospitalization and incidental charges which we convert to extra nourishment and incidental charges. For medical expenses, ₹ 2,993/-, which is the actual amount claimed, is granted. As far as permanent disability, the Tribunal has granted ₹1,80,000/- taking ₹15,000/- as the notional income of the injured. Of course the injured is a boy. For the purpose of fixing compensation only a notional income alone can be taken. But at any rate the income now

arrived at is too low which we enhance to ₹24,000/- per annum. Accordingly, the compensation towards permanent disability will be ₹ 2,88,000/- (24,000 x 15 x 80%). It is clear that the amputation of right hand below shoulder will cause inconvenience to him. He was a student and he will not be able to pursue the studies as before because of the loss of right hand. In future life also, he will have to cope up with lots of inconveniences in the light of the fact that his right hand has been lost. After considering various aspects, ₹ 75,000/- is granted towards loss of amenities, shortened expectation of life and loss of pleasures in life. Similarly, another fact required to be considered is the disfiguration of the body. The Tribunal has granted ₹5,000/- which we enhance to ₹50,000/-. considering the fact that he will have to be adequately compensated for the disfiguration also. Nothing has been granted towards future treatment. Because of the growth of bone every time, he will have to be subjected to surgery. Therefore, we grant an amount of ₹ 25,000/- towards future treatment also.

8. Accordingly, the compensation is recalculated as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Bystander's expenses	4200
Medical expenses	2993
Extra nourishment and incidental charges	2000
Pain and suffering	35000
Disability	288000
Loss of enjoyment in life, loss of pleasures in life and shortened expectation of life	75000
Disfigurement	50000
Future treatment expenses	25000
Total	482193
	Rounded off to ₹.. 4,82,200/- (Rupees four lakhs eighty two thousand two hundred only)

9. The enhanced amount will carry interest @ 9% per annum from the date of petition. We find from the award that out of the total compensation of ₹2,07,993/-, ₹50,000/- has been directed to be released for fixing artificial arm and another amount of ₹50,000/- has been directed to be deposited in a nationalised bank till he attains majority. It is also directed that the balance amount will be deposited

for a period of 15 years irrespective of attaining majority. As rightly pointed out by the learned counsel for the appellant, the restriction is too harsh. Therefore, we pass the following order :

Going by the date of birth of the boy, it is clear that he has attained the age of majority on 25.05.2015. Therefore, instead of depositing of the entire balance amount for a period of 15 years, we make it clear that the appellant can withdraw the enhanced amount of compensation. As far as the deposit made pursuant to the direction of the Tribunal is concerned, we also restrict the period of deposit to 10 years instead of 15 years fixed by the Tribunal and at the end of the 10 year period, he can withdraw the said amount. We direct the Insurance Company to deposit the amount within a period of three months.

The appeal is allowed. There will be no order as to costs.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH, JUDGE

SV.