

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

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THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

MACA.No. 1846 of 2008 (A)

AGAINST THE AWARD IN OPMV 2198/1999 of M.A.C.T.,KOZHIKODE
DATED 04-06-2007

APPELLANT:PETITIONER

SAMSEER K.,
S/O.BASHEER.K,
AGED 22 YEARS,
KADALERIMMALPADI HOUSE, KARUVANTHURUTHY POST,
FEROKE, KOZHIKODE.

BY ADVS.SRI.SUDEESH KUMAR RAMAKRISHNA
SRI.SUNIL KUMAR A.G

RESPONDENT(S):RESPONDENTS

1. M.SATHEESAN, S/O.VASU
K.P.NIVAS, PERUMUGHAM POST, NALLUR, FEROKE
KOZHIKODE.

2. K.K.VINOD KUMAR, S/O.KUNCHIRAMAN,
MANIYATHU KALAKI VEEDU, MANNUR POST, KOZHIKODE.

3. P.HASSAN, S/O.AHAMMEDKUTTY HAJI
MANNILTHODE HOUSE, FEROKE POST, PETTA
KOZHIKODE.

4. M.RAJAN NAIR, S/O.MADHAVAN NAIR,
PARAMBIL VEEDU, CHELEMBRA POST, MALAPPURAM.

5. THE NEW INDIA ASSURANCE CO.LTD.,
DIVISIONAL OFFICE, MAVOOR ROAD, KOZHIKODE.

R,R1 & R2 BY ADV. SRI.C.K.SREEJITH
R,R5 BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A No.1846 of 2008

Dated this the 9th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

In this appeal filed by the claimant, his grievance is that the Tribunal has not assessed the compensation correctly. The appellant was aged 15 years at the time of the accident and was studying in the 9th standard. The Tribunal has granted a total amount of Rs.2,30,210/-.

2. The accident occurred on 23.03.1999 while he was proceeding on a bicycle through Feroke Bazar towards Ramanattukara side in Kozhikode. The driver of a stationary Jeep bearing Reg.No.KL-11-H-5468 which was parked on the side of the road abruptly moved the same. The appellant was thrown out of his bicycle after the jeep hit the same and he fell underneath a moving stage carriage bus bearing Reg.No.KLM 8739. He sustained serious injuries and was taken to the

Medical College Hospital, Kozhikode. The total amount claimed was Rs.4,50,000/-.

3. The learned counsel for the appellant submitted that very serious injuries have been caused in the accident and before this Court the appellant has produced various documents including the disability certificate issued by the Medical Board of the Medical College Hospital, Kozhikode, dated 12.07.2011 wherein the percentage of disability is shown as 44%. It is submitted that his treatment is being continued even now.

4. The major injury suffered was to the left hip. He had also sustained extensive avulsion of skin and circutaneous tissues over right upper thigh and back. He was examined as PW1 and gave a detailed account of the treatment. From the Farook Hospital, he was taken to the Medical College Hospital. He had to undergo 3 surgeries. Open reduction and nail fixation were done. Since he had sustained crush injuries under the tyre of the bus, the injuries were all very serious in nature. He was treated as an inpatient for a period of 144 days.

5. It is after the initial treatment, he was referred to the Medical College Hospital, for expert treatment. Ext.A5 is the certificate issued by the Principal of Govt. Ganapat Vocational Higher Secondary School showing his academic details. Ext.A6

shows the details of injuries sustained by him, which include fracture of pelvis and blunt injury to abdomen. Ext.A8 also supports the case of sustaining serious injuries. The Tribunal has noted that his situation is most pathetic and even after prolonged treatment, the fracture sustained to pelvis was not properly united. The total destruction of femoral head of right side with proximal migration was noticed. Urethra was ruptured with disfunction. Urological and erectile disfunction was certified at 20% and the other permanent disability due to malunion of fracture of pelvis is assessed at 30%. All these have prompted the Tribunal to record that he is in the most pathetic situation. But the Tribunal did not rely upon the certificates issued by individual doctors.

6. Para.9 shows that he was referred to the Medical Board in the year 2006 and 20% disability was assessed due to the injuries sustained to the hip and blunt injury sustained to abdomen. The same is marked as Ext.C1.

7. The Tribunal has assessed the compensation in the following manner:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Hospitalization and incidental charges	Rs. 21,750.00
2	Medical expense including Ext.A7 series bill	Rs. 20,000.00

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
3	Pain and suffering	Rs. 25,000.00
4	Disfiguration of body	Rs. 10,000.00
5	Loss of expectation in life	Rs. 15,000.00
6	Transportation	Rs. 2,000.00
7	Disability	Rs. 45,000.00
8	Loss of amenity (loss of sexual ability) as per Ext.C1	Rs. 20,000.00
	Total	Rs.1,58,750.00

8. Heard the learned counsel on both sides. The learned counsel for the appellant submitted that the Tribunal should have awarded amount towards future treatment as well as for the continuing and permanent disability. The amount awarded towards disability is only Rs.45,000/-. Even though he was a student, a proper assessment should have been made, it is submitted. Even going by Ext.C1, there will be loss of married life as far as the appellant is concerned. This will affect his further life to a large extent. Therefore it is submitted that for pain and suffering and for loss of amenities and loss of expectation of life, proper amount ought to have have been granted by the Tribunal. The learned counsel for the Insurance Company submitted that proper compensation has been awarded.

9. It is a case where the serious injuries have resulted in deprivation of normal life for a young boy. Certificates and

documents produced before this Court along with I.A.No.1411 of 2015 will show that he has been continuing the treatment. Annexure-A3 certificate will show that he had urinary problems because of the urethral injury.

10. Even though the learned counsel for the Insurance Company submitted that the disability certificate produced now cannot be accepted, we find that since it is issued by the Medical Board, the same can be adopted. What is found by the Medical Board is that he is suffering from post traumatic stiffness right hip joint. Therefore his movements are affected.

11. For all these reasons we find that he is entitled for just and fair compensation. For assessing reasonable amount of compensation we take the annual income as Rs.24,000/- and the multiplier would be 15. By adopting disability as 44%, the compensation would be : $\text{Rs.24,000} \times \frac{44}{100} \times 15 = \text{Rs.1,58,400/-}$. For pain and suffering, what is awarded by the Tribunal is Rs.25,000/-. In fact even now treatments are continuing. Therefore we grant Rs.50,000/- towards pain and suffering and for disfiguration of body, Rs.35,000/- is granted. For loss of amenities, including loss of marriage prospects, because of the inabilities of the appellant proper compensation will have to be awarded. The disability has affected his normal avocations and it

has deprived the pleasures of life also. He is unable to carry on any normal avocation also.

12. For all these reasons, we grant an amount of Rs.1,00,000/- towards loss of enjoyment of life and loss of amenities in life. The Tribunal has granted Rs.21,750/- towards hospitalization and incidental charges As far as the loss of expectation of life also we grant a total amount of Rs.30,000/-. One of the aspects which have not been considered by the Tribunal is the requirement of future treatment. Even going by the evidence adduced before the Tribunal, the fracture has not been united. Documentary evidence adduced before this Court will also show that the treatment is continuing. Even though the medical bills produced are of subsequent dates, we are considering the same only for assessment for compensation towards future treatment and we provide Rs.50,000/- for future treatment.

13. The award passed by the Tribunal is accordingly modified as follows:

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
1	Hospitalization and incidental charges	Rs. 21,750.00
2	Medical expense including Ext.A7 series bill	Rs. 20,000.00
3	Loss of enjoyment in life and loss of marriage prospects, and loss of amenities in life	Rs.1,00,000.00

<i>Sl.No.</i>	<i>Head of claim</i>	<i>Amt.</i>
4	Pain and suffering	Rs. 50,000.00
5	Disfiguration of body	Rs. 35,000.00
6	Loss of expectation in life	Rs. 30,000.00
7	Transportation	Rs. 2,000.00
8	Disability	Rs.1,58,400.00
9	Future treatment	Rs. 50,000.00
	Total	Rs.4,67,150.00

(Rupees Four lakhs sixty seven thousand one hundred and fifty only)

The appellant will be entitled to a total compensation of Rs.4,67,150/- (Rupees Four lakhs sixty seven thousand one hundred and fifty only). The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation, less the amount already paid, within 3 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/

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P.S to Judge