IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

MACA.No. 3155 of 2009 ( )

AGAINST THE AWARD IN OPMV 767/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALAKKAD DATED 29.5.2009

APPELLANT/PETITIONER:
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P.J.RAMESH, S/O.JOHN,C/O.SANKAR,
VENKIDANGU, PUTHIYEDATHU HOUSE, KOLANGATTUKARA
CHOOLASSERY POST, THRISSUR DISTRICT.

BY ADV. SRI.A.R.GANGADAS

RESPONDENTS/RESPONDENTS:
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1. **K.P.R. PRASAD, S/O. K.B.PILLAI,**
   M/S.INSTRUMENATION LTD., CI INSTRUMENTATION, TOWNSHIP
   KANJIKKODE, PALAKKAD.

2. **THE NEW INDIA ASSURANCE CO.LTD.,**
   BRANCH OFFICE SREE VALLI BUILDING, 2ND FLOOR
   ANIKKODE JUNCTION, CHITTUR, PALAKKAD.

   R2 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09-07-2015, ALONG WITH MACA. 573/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

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M.A.C.A.Nos.3155/2009 & 573/2010

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Dated this the 9th day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

Both these appeals arise from the award passed by the Motor Accidents Claims Tribunal, Palakkad in O.P.No.767/2004. The claimant is the appellant in M.A.C.A.No.3155/2009 and the Insurance company is the appellant in M.A.C.A.No.573/2010. As far as the claimant's appeal is concerned, he is seeking enhancement of compensation and the Insurance Company in its appeal is challenging the finding regarding negligence as well as the assessment of percentage of disability.

2. We heard Adv. Sri.A.R.Gangadas learned counsel for the claimant and Adv. Sri. Rajan P. Kalliyath, learned counsel for the Insurance Company.

3. The learned counsel for the Insurance Company

submitted that there is contributory negligence on the part of the appellant also.

4. We find from the narration of the facts leading to the incident that the claimant at that point of time was working as a Circle Inspector Of Police in State service aged 49 at the time of the accident. The accident occurred on 18.6.2004 at about 7.45 p.m. at Kuzhalmannam - Padalodemedu public road. According to the claimant he was standing on the western side of the road for checking vehicles. The offending vehicle is a Maruti car bearing registration No.KL-9E/727 which came from Alathur side. It hit the claimant and another police constable by name Mohanan. As the claimant sustained serious injuries he was immediately taken to Palana Hospital, Kannadi. He was treated there till 31.7.2004 and again readmitted in the hospital on 10.10.2004 and discharged on 21.10.2004. He had undergone treatment in Aswini Hospital, Thrissur and was admitted there on 3.6.2005.

5. Since the appeal by the Company is one

concerning the aspect of negligence, we have considered the finding rendered by the Tribunal on the said point. The appellant/claimant was examined as PW1 and the police had registered a case and the police records are marked in evidence as Exts.A1 to A4. Ext.A3 is the charge sheet filed by the police arraying the driver of the offending vehicle as the accused.

6. There is no contra evidence on the part of the respondents. The Tribunal after referring to the documentary evidence including the scene mahazar found that the accident had happened at a distance of 2 mtrs. east from western tar end of the road and the road was having a width of 10 mtrs. It was therefore found that the claimant was not negligent in causing the accident at all. Even though Sri. Rajan P. Kalliyath, learned counsel for the Insurance Company submitted that the claimant was not expected to stand in the road for inspecting the vehicles, it is a case where the road had the width of 10 mtrs. He was there as part of his official duties and it cannot be said that

he was performing his duties negligently.

7. Apart from the same since the final report is against the driver of the offending vehicle in the light of the decision of this Court reported in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]**, final report of the police is sufficient to find negligence on the part of the accused driver and it is for any party who is objecting to the same to adduce evidence in the matter. For this reason also we find no reason to disturb the finding regarding negligence which was attributed as against the driver of the Maruti car.

8. The injuries sustained are grievous in nature. This is supported by the documents produced by the claimant. The Tribunal had considered various details from paragraph 12 onwards. He had sustained fracture femur and injuries have been caused to the spinal cord also. He had to undergo several surgeries and was operated for cervical spinal stenosis with spinal cord injury. The evidence also shows that he was able to walk only with the help of others and the

Tribunal in paragraph 15 found that he needs the help of a bystander in future also. The Tribunal after referring to the medical bills awarded an amount of Rs.2,99,960/- towards medical treatment, which also justifies the contention of the learned counsel for the claimant that he had sustained very serious injuries and had to undertake prolonged treatment including expert treatment.

9. The main item of dispute between the parties is one concerning the assessment of disability as far as the appellant is concerned.

10. The disability certificates have been marked as Exts.A6, A7, A11 & A12. In Ext.A6 after considering the orthopaedic disability and the fact that he has got residual spastic quadriplegia and he requires supports for walking 15% is assessed as the disability. In Ext.A7 certificate 45% disability is assessed for the urinary problems as well as the loss of reproductive capacity. The next certificate is Ext.A12 which is dated 5.11.2005 and the orthopaedic disability is assessed as 30%. The Doctors have been

examined as PWs 2 and 3.

11. The vehement submission made by the learned counsel for the Insurance Company is that there is no assessment by the Medical Board. In this context learned counsel for the appellant made a reference to the evidence of the Doctor who was examined as PW3. He has spoken about the disabilities of the appellant. The major disability we have noted is 45% reported by Ext.A7 certificate. The doctor has not been cross-examined as to the method by which the assessment was made and other various aspects concerning the assessment. Therefore, we cannot accept the argument of the learned counsel for the Insurance Company that the assessment made in wrong. Going by it the total percentage of disability will be above 60%. But the Tribunal has assessed it at 50% for the purpose of awarding the compensation, which we confirm.

12. The moot point is whether the entire salary income will have to be reckoned for assessing the disability compensation. In this context learned counsel for the

Insurance Company submitted that there is no loss of earning capacity as far as the appellant is concerned since he obtained a promotion as Deputy Superintendent of Police later. Learned counsel for the claimant explained that he was suffering from disabilities but was adjusted against an administrative post and therefore it will not be a case where the court can deny due compensation based on the percentage of disability. It is further submitted that the said promotion itself was delayed.

13. The evidence is to the effect that he was earning Rs.11,435/- as the monthly income and for the purpose of assessing the fair and just compensation towards physical disability, we take ½ of the income and the multiplier being 13 the compensation on that count will be an amount of Rs.4,45,965/-. Compensation is liable to be granted for permanent physical disability and not on the basis of loss of earning power alone, which is a settled legal principle. The Tribunal has assessed the amount as one for loss of earning capacity which we modify as one for permanent disability.

14. He was under treatment for a long time and had undergone several surgeries. Therefore we fix an amount of Rs.50,000/- towards pain and suffering. The Tribunal has granted amount towards loss of amenities only at Rs.25,000/-. It is a case where the physical disabilities, neurological disabilities and other disabilities we have reckoned will result in loss of amenities, loss of enjoyment in life and loss of pleasures in life and he will have to lead a life fully depending on others also. Therefore we fix an amount of Rs.1 lakh towards loss of amenities. As regards other counts also, we confirm the award passed by the Tribunal with slight modifications.

15. Accordingly, we re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.
Bystander's expenses	100x250 25000
Transportation	10000
Extra nourishment	5000
Damage to clothing	1500
Treatment expenses	299960

Head of claim	Amount re-fixed in Rs.
Future treatment	35000
Pain and suffering	50000
Permanent disability	5718x12x50x13/100 446004
Loss of amenities	100000
Loss of leave taken	10000
Total	9,82,464 Rounded off to **Rs.9,82,460** **(Rupees nine lakh eighty two thousand four hundred and sixty only)**

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

Since the Insurance Company is found liable, there will be a direction to the Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellant will be entitled for the release of the amount.

Accordingly, M.A.C.A.No.573/2010 is dismissed and M.A.C.A.No.3155/2009 is allowed.

There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

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