

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

MACA.No. 3215 of 2009 ()

AGAINST THE AWARD IN OPMV 965/2004 of M.A.C.T OTTAPPALAM DATED
01-07-2009

APPELLANT/PETITIONER:

HARIDAS, S/O AYYAPPAN, POOLAKKAL HOUSE
GANESHGIRI, SHORANUR, OTTAPALAM TALUK
PALAKKAD DISTRICT.

BY ADV. SRI.K.B.ARUNKUMAR

RESPONDENTS/RESPONDENTS

1. HARIDASAN, S/O BALAKRISHNAN
VILAKKATHALA HOUSE, NEDUNGOTTOOR, SHORANUR
PALAKKAD DISTRICT. (DRIVER OF THE AUTORICKSHAW
BEARING REGISTRATION NO.KL-9-B/2368)

2. P.MADAVIKUTTY, 143, SOUTHERN RAILWAY
QUARTERS NO.32, F-3, SHORANUR
PALAKKAD DISTRICT
(OWNER OF THE AUTORICKSHAW BEARING REGISTRATION
NO. KL-9-B/2368)

3. THE UNITED INDIAN INSURANCE CO. LTD.,
FAIZAL BUILDING MAIN ROAD, OTTAPALAM, (INSURER OF
THE AUTORICKSHAW BEARING REGISTRATION NO.KL-9-B/
2368)

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.3215 OF 2009

Dated this the 14th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant highlighting the alleged inadequacy of the compensation. The accident occurred on 9.7.2004 while he was travelling in autorickshaw. Earlier an award was passed in favour of the appellant granting compensation to the tune of ₹1,65,562/- which was challenged in M.A.C.A.No.1938/2005 by the respondent and this Court allowed the appeal and remanded the matter for fresh consideration. Presently an amount of ₹48,800/-has been granted along with interest @ 8% per annum.

2. The appellant was working as Khalassi at the time of the accident. The injuries noted in the wound certificate are total amputation of (L) thumb at the distal interphalangeal joint, fracture of middle phalanx of left thumb. He was admitted in the hospital on 9.7.2004 and discharged on 10.7.2004. Ext.A12 disability certificate

issued by the Assistant Professor of Orthopaedic Surgeon attached to the Medical College Hospital, Thrissur reported disability of 15% for the purpose of assessing compensation as whole body disability. The doctor noticed disabilities such as loss of distal phalanx of left thumb, stiffness and pain of left thumb at MCP and IP., loss of fraction of left thumb, gross limitation of movements of thumb flexion and gross disfigurement of thumb etc.

3. The learned counsel for the appellant submits that the income assessed is only at ₹2,500/- and the multiplier adopted is only 8.

4. We find from the reading of the award that the finding is that the job of the appellant has not been affected and there is no reduction of income. But still the Tribunal fixed notional income for the purpose of assessing disability compensation at ₹2500/- and adopting the multiplier of 10, ₹24000/- has been granted.

5. Thereafter an amount of ₹8,000/- has been granted towards pain and suffering, ₹4,000/- towards loss of amenities during the treatment period, another amount of ₹6,000/- for loss of amenities till retirement period, ₹2,000/- towards medical expenses, ₹300/- towards

bystanders expenses as well as ₹1500/- towards damage to clothing.

6. Therefore for loss of amenities, ₹10,000/- has been granted counting the treatment period and the period upto retirement.

7. The learned counsel for the Insurance Company submitted that the appellant is not entitled for any enhancement.

8. We find that the method adopted by the Tribunal for calculation of compensation is not the correct one, herein, since there is no adverse impact on the job and there is no reduction of salary. For loss of earning power, he will not be entitled for any compensation. The compensation will have to be assessed towards loss of enjoyment of life, shortened expectation of life and loss of amenities. In that view of the matter, the multiplier method adopted cannot be justified. We will convert the amount of ₹24,000/- granted for disability along with ₹10,000/- for loss of amenities under the combined head of loss of amenities of life, loss of enjoyment of life and shortened expectation of life.

9. The learned counsel further submitted that the amount awarded towards pain and suffering is too low. The left thumb of the appellant has been amputated. Even though the period of treatment is

only two days, we award a sum of ₹12,000/- towards pain and suffering. Apart from the same, for disfigurement, nothing has been granted by the Tribunal. The same is a permanent impairment as far as the appellant is concerned. He will have to experience the same throughout his life apart from loss of amenities of life and enjoyment of life. We grant an amount of ₹15,000/- towards disfigurement.

10. Accordingly, we recompute the compensation in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
loss of enjoyment of life, shortened expectation of life and loss of amenities.	34000
Bystanders expenses	300
Transportation, extra nourishment, damage to clothes	1500
Pain and suffering	12000
Loss of income	3000
Disfigurement	15000
Medical expenses	2000
Total	67800 (Sixty seven thousand eight hundred only)

11. The amount will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited, if any, within a period of three months from the date of receipt of a copy of this judgment.

The appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.