

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

MACA.No. 2023 of 2008 (F)

AGAINST THE AWARD IN OPMV 10/2003 of MACT, IRINJALAKUDA
DATED 31-03-2008

APPELLANT/PETITIONER IN OPMV::

SHAJU, S/O.MENACHERY OUSEPH,
POTTA DESOM, PERAMBRA VILLAGE, POTTA P.O.
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.V.BABY

RESPONDENTS/RESPONDENTS IN OPMV::

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1. T.S.GOPINATHAN, S/O.THOTTAPPILLY
SUBRAMANIAN, MOORKANAD P.O.
 2. SOBY DAVIS, S/O.KUTTIKKATTU DAVIS,
PAZHUVIL P.O.
 3. NATIONAL ISSURANCE CO.LTD.,
ROUND EAST, THRISSUR.

BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant had sustained serious injuries in a motor accident that occurred on 18-08-2002 involving a motorcycle by which he was travelling and a goods vehicle driven by the second respondent, owned by the first respondent and insured with the third respondent. The appellant preferred a petition before the Motor Accidents Claims Tribunal, Irinjalakuda, claiming compensation on account of the injuries sustained by him in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the second respondent and awarded a total compensation of ₹1,82,300/- under various heads as follows:

Permanent disability - ₹61,200/-

Bystander's expenses	- ₹ 4,400/-
Transportation	- ₹ 2,000/-
Loss of earnings	- ₹14,000/-
Medical expenses	- ₹72,700/-
Pain and suffering	- ₹20,000/-
Loss of amenities	- ₹ 8,000/-

The third respondent Insurance Company was directed to deposit the amount. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the third respondent Insurance Company. Since the insurance cover for the goods vehicle driven by the second respondent remains admitted, notice to the respondents 1 and 2 is dispensed with as unnecessary.

3. The appellant had sustained Grade-IIIB open fracture of both the bones of his left leg with tissue loss and also muscle and tendon loss, fracture of lateral malleolus of left

ankle and closed fracture of the base of 5th metacarpal bone of left little finger apart from sustaining some other injuries. He was treated as an inpatient for 44 days. He has continued long period of outpatient treatments. He was treated with wound debridement. External fixation was applied. POP cast was applied. He has also undergone plastic surgery as part of treatment. The learned Tribunal observed in the award that the gravity and the seriousness of the injuries were physically visible on the left leg of the petitioner. Ext.A6 is a Disability Certificate issued by Dr.C.P.Johny, Orthopaedic Consultant. He is a retired Civil Surgeon Gr.I. In this document, the details of the serious nature of the injuries suffered by the appellant in the accident has been narrated. Various treatments undergone by the appellant are noted. Various disabilities being experienced by the appellant are also explained. The doctor has come to the conclusion in Ext.A6 that the appellant has a whole body disability of 30.90%. Even though the grave nature of the injuries suffered by the appellant and the

treatments undergone by him as also the disabilities of the petitioner have been noticed, the learned Tribunal did not take into consideration the quantum of permanent disability certified in Ext.A6. Instead, the Tribunal accepted only 15% as the permanent disability sustained by the appellant. Going by the nature of the injuries suffered, treatments undergone, the disabilities noted in Ext.A6 and the disabilities noted by the learned Tribunal, we are of the view that the permanent disability reckoned by the learned Tribunal for the purpose of calculating and awarding compensation is on the lower side. We are of the view that the permanent disability suffered by the appellant should be reckoned, at least, as 20% for the whole body. The Tribunal fixed the monthly income of the appellant at ₹2,000/-. The accident had occurred in 2002. The appellant was aged 34 at that time. Therefore, based on probabilities, his monthly income can be fixed at ₹3,000/- for the purpose of awarding compensation for loss of earnings during that period. The Tribunal awarded ₹14,000/- towards loss of earnings. On

considering the long period of inpatient as well as outpatient treatments, we are of the view that the appellant could not have earned any income after the accident at least for a period of ten months. Therefore, calculating the monthly loss of earnings at the rate of ₹3,000/-, the total amount under that head comes to ₹30,000/-. We allow the same. As already noted, the appellant was aged only 34 at the time of accident. Therefore, on considering the future better prospects in relation to his income, we fix the monthly income of the appellant at ₹4,000/- for the purpose of calculating and awarding compensation under the head of loss of earning power. On considering the age of the appellant, a multiplier of 16 will be appropriate. Applying the said multiplier, the loss of earning power works out at ₹1,53,600/- ($₹4,000/- \times 12 \times 16 \times 20/100$). We allow the same. ₹2,000/- awarded under the head of transportation is enhanced to ₹4,000/-. The Tribunal awarded ₹20,000/- as compensation for pain and suffering. This is insufficient. When the serious nature of injuries, long period of

treatments and the nature of treatments undergone are considered, we are of the view that the amount awarded under that head should be enhanced to ₹40,000/-. Therefore, we allow the said amount. It goes without saying that the petitioner has been experiencing considerable discomfort and loss of amenities in his life which may continue till the end of his life. Therefore, we enhance ₹8,000/- awarded under that head to ₹25,000/-. The learned Tribunal after personally seeing the appellant observed that the appellant's left leg was totally deformed and disfigured below the knee with ugly extra growth of muscle up to the foot. It appeared to the Tribunal that his foot had no proper action. He cannot walk properly with his deformed leg with extra growth. Also observed that the medical documents describe it as elephantiasis. Further it is observed by the learned Tribunal that the swelling in the form of extra growth of muscles had made the left leg of the appellant totally deformed. On considering these facts, ₹25,000/- is allowed under the head of disfigurement. Thus, the appellant

is entitled to an additional compensation of ₹1,72,400/- (Rupees one lakh seventytwo thousand and four hundred only) over and above the compensation awarded by the Tribunal. The said amount of ₹1,72,400/- shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realisation. The third respondent Insurance Company is directed to deposit the amount within 30 days from the date of receipt of a copy of this judgment.

This appeal is allowed in part as above.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

