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 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

MACA.No. 2127 of 2008 ( )

AGAINST THE AWARD IN OPMV 1105/2005 of M.A.C.T. TIRUR DATED 29-04-2008

APPELLANT(S)/ 3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD,
CHENNAI, REPRESENTED BY ITS ASSISTANT MANAGER
REGIONAL OFFICE, ERNAKULAM, NORTH
KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S)/CLAIMANT:

AJAY DAS, S/O.DEVADASAN, REPRESENTED BY
NEXT FRIEND AND GUARDIAN FATHER, DEVADASAN
S/O.SHANKUNNI NAIR, RADHA NIVAS, (PO)KUTTIPURAM
TIRUR TALUK, MALAPPURAM DISTRICT.

R,R1 BY ADV. SRI.N.RAGHURAJ
R,R1 BY ADV. SMT.K.AMMINIKUTTY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 9-4-2015, ALONG WITH MACA. 1910/2009, THE COURT ON 20.5.2015 DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.
- -
M.A.C.A.Nos.2127/2008 and 1910/2009
- -
Dated this the 20th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

Both these appeals are from the award in O.P.(MV) No.1105/2005 on the file of the Motor Accidents Claims Tribunal, Tirur. The insurance company is the appellant in MACA No.2127/2008 and the claimant is the appellant in MACA No.1910/2009 and he is seeking enhancement of the compensation awarded. In the appeal filed by the insurance company, the challenge is mainly on the grant of excess compensation under various heads.

2. The accident occurred on 23.6.2005. The claimant was travelling as a pillion rider in a motor cycle bearing Reg. No.KL-10J 5073 from Vettichira to Kuttippuram. At a place called Kanhippura, the offending vehicle, viz. a bus bearing Reg. No.KL-11R-7200 dashed against the rear side of the motor cycle and the claimant suffered

serious injuries. This is a case where the injuries have resulted in great tragedy for the claimant. As a result of the injuries sustained, he has become a quadriplegic. He is suffering from weakness of both limbs and he has no balance while sitting and he can sit only with a support. He has lost his power of speech also. This is the background under which the claimant is seeking enhancement of the quantum of compensation.

3. Before the Tribunal, the father of the appellant was examined to explain the details of injuries and the resultant impact of the same on his physical frame and his life. Exts.A1 to A49 documents have also been produced. The respondents did not adduce any evidence.

4. The following are the injuries recorded in Ext.A5 wound certificate: (1) Bleeding from right ear and nose; (2) fracture of nasal bones; (3) swelling on right hand and right foot; (4) burn over dorsum of right foot with full thickness skin loss of 10 x 5 cm. Ext.A18 is the discharge summary issued from the Department of Neurosurgery in Moulana Hospital, Perinthalmanna. Therein the following are the injuries noted: (1) subdural haemorrhage in both temperoparietal lobes;

(2) haemorrhagic contusion in both parietal lobes; (3) pneumocephalus; and (4) fracture of left temporal bone. It has also been recorded in the C.T. scan report also.

5. In paragraph 16 of the judgment the Tribunal has extracted the details of the treatment which are recorded in Ext.A18. The same are the following:

> "In view of his bad clinical condition, he was put on ventilatory support. In view of the severe oedema and hemorrhage patient was taken for bilateral bony decompression. Dural opening, washing of subarachnoid space and evacuation of subdural, post operation he was ventilated for 9 days, thereafter respiration became regular and adequate. Tracheostomy was done on 1.7.2005. Bone flaps kept in the abdomen. He was treated with antiedema, antibiotic and anticonvulsant medications. He remained unconscious for about 70 days. Tracheostomy removed on 28.8.2005. Patient was gradually improving. Cranioplastydone on 4.11.05. Now patient is conscious but aphasic and having bilateral spaticity. Ryles tube feeding continuing because of severe spasm of limbs he is still bed-ridden. Incontinence of bowel and bladder persists."

The appellant was admitted in Moulana Hospital, Perinthalmanna on 23.6.2005 and discharged on 10.12.2005. He was treated even thereafter as inpatient for succeeding periods. Those are:

> 7.2.2006 to 15.2.2006 - Moulana Hospital, Perinthalmanna (confirmed in Ext.A43 discharge summary). 25.7.2006 to 23.8.2006 - Medical College Hospital, Kozhikode. 4.10.2006 to 31.10.2006 - Medical College Hospital, Kozhikode. A surgery was conducted on 21.10.2006. 22.11.2006 to 16.12.2006 and from 26.1.2007 to 12.2.2007 for gait training in the said hospital. These treatments have been undertaken because of weakness of both upper and lower limbs and loss of power of speech. (aphasia).

6. The disability certificate issued by the Medical Board is marked as Ext.A41 which records weakness of both upper and lower limbs. He has no sitting balance and he is suffering from aphasia (loss of power of speech) and the permanent disability is calculated at 75%.

7. Learned Senior Counsel for the insurance company Shri George Cherian submitted that while awarding amounts, the Tribunal has granted excess amounts. It is submitted that after granting Rs.1 lakh as compensation for loss of amenities in life, another sum of Rs.1 lakh

has been granted for loss of power of speech which amounts to a duplication, as the latter will be covered by the former itself. Another objection raised is with regard to the award of amounts towards expenses for bystander by adopting the multiplier method. It is submitted that the Tribunal has fixed the monthly remuneration at Rs.3,000/- for an attendant and adopting a multiplier of 17, the compensation under the head of bystander's expenses is calculated at Rs.6,12,000/- which is totally exorbitant and it is also submitted that the multiplier method cannot be adopted to fix a quantum like expenses for attendant. It is also submitted that the total amount of Rs.28 Lakhs awarded as compensation is highly excessive.

8. Shri N. Reghuraj, learned counsel for the claimant submitted that the income of the claimant has been assessed only at Rs.5,000/-. It is submitted that he was a qualified person and was working as Technical Associate in Socio Economic Unit Foundation. His qualifications will show that he had obtained Diploma in Engineering from a Polytechnic institution. He has passed the course in Computer Aided Design, Drafting and Animation conducted by a Polytechnic; has

obtained National Trade Certificate in Draftsman (Civil) from Industrial Training Centre. He has been registered as Supervisor under Kerala Municipality Building Rules by the Department of Municipal Administration. These have been proved by Exts.A10 to A13 certificates. It is submitted that Ext.A36 will show that he has got experience by working as Draughtsman cum supervisor in U.B. Associates during May 2000 to January, 2003.

9. Our attention is invited to the evidence of P.W.1 father who stated that the claimant was offered a job in the Socio Economic Unit Foundation for a salary of Rs.7,000/- per month after the period of probation. It is also submitted that no amount has been reckoned towards future prospects and the Tribunal did not consider the income from other sources, viz. for preparing plan and estimate of buildings and supervising construction of buildings for which evidence was there. It is also submitted that P.W.5 who was the employer was examined and his evidence was not accepted. It is further submitted that Ext.A9 will show the he was issued admission ticket by the Public Service Commission for appearing in the selection test for the post of

L.D.C. on 3.9.2005 and Ext.A27 is another admission ticket for appearing in the selection conducted by the Public Service Commission on 14.10.2006 for the post of Work Superintendent. All these will cumulatively show that he was qualified and was earning good income. He was aged only 24 years and had very good prospects in life. It is therefore submitted that the income assessed by the Tribunal at Rs.5,000/- per month is too low. It is also submitted that the Tribunal has not granted adequate amounts for future treatment. This is a case where the claimant requires constant medical attention and continuous medical treatment. There are two attendants to lift himself from the bed and further he needs support even for sitting. None of his personal needs can be attended to by him. Therefore, all these require proper help and adequate compensation should have been awarded for loss of all pleasures in life. He will have to lead his life in the same state for the rest of his life.

10. We have considered the rival submissions. The evidence in support of his academic background are Exts.A10 to A13, A36 and the oral evidence of P.Ws.1 and 5. He had obtained diploma in Civil

Engineering from a Polytechnic as well as in Computer Aided Design, Drafting and Animation. He had obtained National Trade Certificate from Industrial Training Centre. Of course, the Tribunal has found that as on the date of accident he was having only a contract employment in SEU Foundation.

11. The accident occurred in the year 2005. It is also the evidence that he was supervising construction works and had been drawing plans and preparing estimates. The income claimed will therefore have to be assessed taking into account various aspects. The employment as Technical Associate in SEO Foundation on payment of honorarium of Rs.4,350/- per month is proved. But a proper amount will have to be fixed commensurate with his qualification and potential. He had the required academic qualifications from Polytechnic and Industrial Training Centre. Rs.5,000/- per month is claimed as income from preparing plans, estimates and from supervision of constructions. After considering the evidence, we are of the view that his monthly income can be safely and reasonably be fixed at Rs.7,000/- for fixing the amount towards compensation for permanent disability.

12. That the claimant has got 100% disability is clear. He is unable to move himself in any manner and he can sit only with support. He has lost power of speech also. Therefore, the compensation towards permanent disability will be Rs.15,12,000/-. The multiplier will be 18, going by his age. The loss of earning power due to the disability is taken as 100%, as he is unable to carry on any activities. He is confined to wheelchair life. He is mentally alert but cannot speak and all the four limbs are affected. The Tribunal has made a record of these in paragraph 31.

13. The Tribunal has made a detailed consideration of the claims under different heads after relying upon various decisions rendered by the Apex Court. Towards compensation for pain and suffering, an amount of Rs.2 lakhs has been awarded. The Tribunal has recorded that he was in the hospital for a total period of 282 days. He could not take food by himself and tube feeding had also to be done. The above amount is arrived at by considering the pain and suffering undergone by him and which will continue for the rest of his life. After considering the various treatment procedures undertaken by him, the

amount has been fixed and we find no reason to interfere with the same.

14. As regards loss of amenities in life, Rs.1 Lakh has been given and for loss of power of speech and another sum of Rs.1 lakh has been given for loss of amenities. Of course, both will come under the general head “loss of enjoyment and amenities in life”. By combining these two claims the total compensation will be Rs.2 lakhs which does not appear to be exorbitant. Therefore, we grant the said amount under the head of loss of amenities and enjoyment in life.

15. Towards expenses for physiotherapy, based on the bills issued, the Tribunal has granted a sum of Rs.1,05000/-. Exts.A16, A19, A28 and A38 are the receipts issued by P.W.2 for conducting physiotherapy. Considering the treatment being undertaken for him, his physical condition and in the light of the evidence of P.W.1 that the claimant is undergoing physiotherapy every day, the said amount is justified.

16. As expenses for attendant, an amount of Rs.6,12,000/- has been granted. Herein, two witnesses were examined, viz. P.Ws.3 and 4

to prove that they are daily attending to the needs of the claimant. They have produced various receipts for payment of salary also. But the receipts were not from the earliest point of time. The discussion of evidence is clear from paragraph 61 of the judgment. The Tribunal has found that their evidence is that they are being paid every month as salary. After discussing various evidence, the Tribunal found that those items of evidence are not acceptable. But finally it is pointed out that since the situation of the claimant requires an attendant every day, a reasonable amount has to be granted. By fixing Rs.3,000/- per month and adopting a multiplier of 17, the amount has been arrived at. The Tribunal has adopted 17 as the multiplier and the same is the multiplier adopted for fixing the permanent disability also. According to us, learned Senior Counsel for the insurance company is right in submitting that the Tribunal erred in adopting the multiplier method for fixing bystander's expenses (nursing attendant). It will, therefore, have to be refixed.

17. Shri N. Reghuraj, leaned counsel for the claimant submitted that the evidence of P.Ws.3 and 4 will show that the claimant needs at

least two attendants every day. Apart from the nursing care, herein for every item of activity he needs support. He has lost power of speech also. Of course, in a matter like this, we will have to assess the compensation which does not appear to be exorbitant but it should be reasonable also. The fact that at least one bystander requires every day, is important for assessing the remuneration. A reasonable amount can be calculated for giving monthly remuneration for the bystander. Of course, it requires for the rest of his life also. We will be justified in providing a reasonable amount which will return an adequate amount as interest for meeting expenses. Accordingly, we fix an amount of Rs.4,00,000/- towards bystander's expenses.

18. The evidence of P.W.1 is that physiotherapy will have to be done every day. That he is undergoing different types of treatment and an attempt is being made to restore the power of speech also, is in evidence. Apart from the same, various other medicines will have to be administered to him to maintain the general health and since he is only aged 24 years, we will have to fix a reasonable amount for future treatment which we fix at Rs.2,50,000/-. As far as loss of prospects of

marriage also is concerned, the Tribunal awarded an amount of Rs.75,000/- which we enhance to Rs.1 lakh. Even though an amount of Rs.1,70,000/- has been granted as loss of salary of the mother, as rightly pointed out by the learned Senior Counsel for the appellant in MACA No.2127/2008, the same cannot be awarded as compensation. Therefore, we delete the same, even though learned counsel for the claimant submitted that the same is supportable.

Therefore, the total compensation is refixed in the following manner:

Head of claim	***Amount awarded by the Tribunal***	***Modified award passed by this Court***
Transport to hospital	17500	17500
Damage to clothing	500	500
Medical bills	377200	377200
Extra nourishment	25000	25000
For permanent disability and loss of earning power	1020000	15,12,000
Future treatment		250000
Pain and suffering (continuing)	200000	200000
Loss of amenities and enjoyment in life and loss of power of speech	100000 + 100000	200000
Loss of marriage prospects	75000	100000
Expenses for attendant	612000	400000
Expenses for physiotherapy	105000	105000

Head of claim	***Amount awarded by the Tribunal***	***Modified award passed by this Court***
Loss of salary of mother	170000	NIL
Total		3187200

(Rupees Thirty-one Lakhs eighty-seven thousand and two hundred only).

The enhanced amount of compensation will carry interest at 9% per annum from the date of the petition. Except for the amount of Rs.2,50,000/- granted as compensation for future treatment, the remaining amount will carry interest and the direction of the Tribunal in paragraph 72 is modified accordingly. The directions issued by the Tribunal in paragraph 71 of the award with regard to the deposit of amount in a nationalised bank and permitting the appellant to withdraw the monthly interest, will continue. The insurance company is directed to deposit the entire amount less the amount already deposited, within a period of three months. So as to modify any of the conditions prescribed, the appellant/claimant is given liberty to move the Tribunal itself. The court fee, if any, payable on the total compensation will also be recovered by the Tribunal from the amount to be deposited by the insurance company.

M.A.C.A. NO.2127/2008 is dismissed and M.A.C.A. No.1910/2009 is allowed. The parties shall bear their costs in the appeals.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

kav/