

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

MACA.No. 2899 of 2008 ()

**AGAINST THE AWARD IN OPMV 389/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THALASSERY DATED 28-06-2008**

APPELLANT/(PETITIONER IN OP(MV) 389/04):

**BEENA, AGED 31 YEARS, D/O. NARAYANAN
VILLAKKANADATH HOUSE, PULIKKURUMBA P.O. NADUVIL
AMSOM DESOM, KANNUR DISTRICT.**

BY ADV. SMT.K.K.CHANDRALEKHA

RESPONDENTS/(RESPONDENT NO.3 IN OP(MV) 389/04):

- 1. V.J.THOMAS, AGED 39 YEARS, S/O. JOSEPH
VEETTUVELIKKUNNEL HOUSE, ERUVESY AMSOM
CHEMBERY DESOM P.O. CHEMBERY, KANNUR DISTRICT.**
- 2. SEBASTIAN, MANNARAMBIL HOUSE,
KAYILAMPARA, P.O.CHEMBERY, KANNUR DISTRICT.**
- 3. DIVISIONAL MANAGER,
NATIONAL INSURANCE CO.LTD., DIVISIONAL OFFICE
P.B.NO.40, BANK ROAD, KANNUR-1.**

R3 BY ADV. SMT.P.K.SANTHAMMA

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A. No.2899 of 2008

Dated this the 25th day of May, 2015

J U D G M E N T

Ramachandran Nair, J.

The claimant is the appellant herein and she is mainly aggrieved by insufficiency of the quantum of compensation fixed by the Tribunal. She also contended that the finding that the Insurance Company is not liable is also not correct as the policy in question was not an act only policy but a package policy.

2. The learned counsel for the appellant submitted that in M.A.C.A.No.2898/2008, which arose from the award in O.P.(M.V.)388/2004 of the same Tribunal, before the Division Bench, which heard the appeal, the learned counsel for the Insurance Company submitted that the policy in question is a package policy and this court directed the Insurance Company to pay the compensation. This appeal also is from the same accident by another claimant.

3. The accident occurred on 20.02.2003 and the appellant was travelling in a Maruti omni van bearing registration No.KL-13-F-5549 from Chembery to Kozhikode Airport. At a place near Kainatti Junction near Vadakara it hit against a bus bearing registration No.KL-11-G-5112 which was not on motion but was parked on the road margin. The total amount of compensation which was granted by the Tribunal is Rs.31,000/- under the following heads:

Head of claim	Amount awarded in rupees
Loss of earning for six months	9,000/-
Transport to hospital	1,500/-
Extra nourishment	2,000/-
Medical expenses including bystanders expenses	7,500/-
Compensation for pain and suffering	6,000/-
Compensation for loss of amenities in life	5,000/-
Total	31,000/-

4. The learned counsel for the appellant submitted that the amounts awarded under various heads are totally inadequate. We find from the discussion and the evidence

that she was treated for a period of 22 days under two spells; first one from 20.02.2003 to 06.03.2003 and second one from 17.04.2005 to 26.04.2005 for implant removal. We have also considered the fact that the notional income fixed is too low. She was a tailor by profession and gained Rs.5,000/- per month. The learned Tribunal has simply fixed it as Rs.1,500/- per month. It will be reasonable to fix the amount as Rs.3,500/- per month as the accident is of the year 2003. The Tribunal has granted loss of earnings for six months at Rs.9,000/-, which we enhance to Rs.21,000/-. We are also of the view that the compensation towards pain and suffering which is fixed as Rs.6,000/- require enhancement. In the light of the fact that she had undergone surgery and in the light of the fact that she had suffered a fracture namely the fracture of left ulna, we fix the amount at Rs.15,000/- towards pain and suffering. There is no permanent disability. Therefore, no amount can be granted under the said head.

5. Therefore we refix the compensation in the

following manner:

Head of claim	Amount awarded in rupees
Loss of earning for six months	21,000/-
Transport to hospital	1,500/-
Extra nourishment	2,000/-
Medical expenses including bystanders expenses	7,500/-
Compensation for pain and suffering	15,000/-
Compensation for loss of amenities in life	5,000/-
Total	52,000/- (Fifty two thousand)

6. We also direct that in modification of the award, since in the connected appeal MACA 2898/2008, the Insurance Company was directed to meet the liability, we hold that the third respondent will be liable to meet the liability as against this award also.

7. Accordingly, we allow the appeal and also hold that the enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation.

There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount

already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company. There will be no order as to costs in the appeal.

Sd/-

**T.R. RAMACHANDRAN NAIR
JUDGE**

Sd/-

**K.P. JYOTHINDRANATH
JUDGE**

shg/