

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 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 2995 of 2008 ()

**AGAINST THE AWARD IN OP(MV) 672/2003 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,PERUMBAVOOR DATED 21-04-2008
APPELLANT/PETITIONER:**

**NOUSHAD K.A. 26 YEARS
S/O. ALIYAR, KAMBUNKAL HOUSE, KADAVOOR.P.O.**

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS/RESPONDENTS:

- 1. M.T.ASHOKAN
MUNDAKKAKUDY HOUSE, MARAMPILLY.P.O, NORTH EZHIPPRAM.**
- 2. AYOOB KHAN, S/O. SAIDU MOHAMMED,
THAZHATHAN HOUSE, EZHIPPURAM, MARAMPILLY.P.O
KANAMPARAMBU KARA.**
- 3. NATIONAL INSURANCE CO. LTD.,
KOLENCHERRY BRANCH, POST BOX NO. 6
MEDICAL MISSION JUNCTION, KOLENCHERY.P.O.**

**R1 & 2 BY ADV. SRI.SIRAJ KAROLY
R3 BY ADV. SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.2995 of 2008

Dated this the 22nd day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant who is suffering from total paraplegia is before this court in this appeal aggrieved by the inadequacy of the compensation. The total amount of compensation claimed is Rs.8,39,500/- and the Tribunal has awarded an amount of Rs.5,25,150/-. Since we are only on the quantum of compensation, no other questions need be considered including the finding regarding negligence.

2. The appellant, was working in a sawmill at the time of accident and while he was walking through the Aluva - Perumbavoor K.S.R.T.C road as a pedestrian on 10.2.2003 he was knocked down by an auto rickshaw bearing registration No.KL-7/Z-5943. The insurance company is saddled with the liability to meet the awarded amount.

3. A short narration of the injuries sustained,

treatment undertaken and the present position of the appellant may have to be made for assessing the compensation. He has sustained the following injuries:

1. Weakness of both lower limbs.
2. Compression fracture to T12 vertebra.
3. Fracture to 12th rib left.
4. Spinal cord contusion.

Going by Ext.A5 Accident Register Cum Wound Certificate issued from the Lisie Hospital, Cochin there was spinal cord contusion. The appellant was treated in different hospitals. Initially he was admitted in Sanjoe Hospital, Perumbavoor on 10.2.2003 and was removed to Lisie Hospital, Ernakulam for better treatment. He continued there up to 14.2.2003. On the said date he was admitted to the Brain & Spine Centre, Vaikom wherein he was treated up to 8.3.2003 as an inpatient. From 18.3.2003 to 3.6.2003 he was treated in Chazhikattu Hospital, Thodupuzha and from 14.8.2003 onwards he started Ayurvedic treatment in another hospital where he was treated till 1.9.2003. It is the case that he had to continue the treatment thereafter and physiotherapy is

also continuing. Therefore the total period of inpatient treatment is 120 days. The disability certificate issued by the Medical Board of the Taluk Head Quarters Hospital, Thodupuzha shows the percentage of disability as 90. It is recorded that he is suffering from complete paraplegia with urinary and bowel incontinence.

4. The learned counsel for the appellant, by inviting our attention to the condition of the appellant submitted that he is completely laid up and is unable to move out from his bed and requires a service of a bystander constantly. It is submitted that he was unmarried at the time of accident and therefore there is total loss of prospects of marriage. We have noticed from the award that he was personally brought before the Tribunal in ambulance and the learned Tribunal had seen the appellant and it is recorded in the award that the patient was laid up complete paraplegia with bedsores and he was not able to sit without the help of bystanders. Therefore it is a case where we will have to take the physical frame of the appellant in such a stage that

he is unable to move out and is completely bedridden. The medical certificate describes the position as total paraplegia. The improvements in his condition is therefore bleak and hoping for the best he is undergoing ayurvedic treatment as well as physiotherapy.

5. Going by the pleadings of the appellant, he was working in a sawmill and was earning Rs.3,875/- per month, but the learned Tribunal has arrived at the monthly income only at Rs.2,000/-. It is the case of the learned counsel for the appellant that documentary evidence may not be available for such type of employment and therefore a reasonable amount ought have been fixed by the Tribunal. Learned counsel for the Insurance Company submitted that in the absence of any evidence the view taken by the Tribunal cannot be said to be faulty.

6. In this context the learned counsel for the appellant relied upon two judgments of the Apex court in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd. [(2011) 13 SCC 236]** and **Syed**

Sadiq v. United India Insurance Co. Ltd. [(2014) 2 SCC 735]. In the first decision as regards a daily labourer in which the accident occurred in 2004 the Apex court held that wages taken at Rs.4,500/- per month cannot be said to be exorbitant. In the latter case in the case of a vegetable vendor, who was aged 24 the monthly income was taken at Rs.6,500/- where the accident occurred in the year 2008. Of course there is no fetter on the power of the court to fix it properly. Learned counsel also vehemently sought for fixing the quantum by taking the future prospects also. The learned counsel for the Insurance Company submitted that the question whether in respect of workers in unorganized sectors there can be addition for reckoning the future prospects is a matter pending before the larger bench of the Apex court.

7. After considering the pleas from the learned counsel on both sides, we are of the view that his monthly income can be fixed at Rs.4,000/- and it will not be exorbitant and we adopt the same. The multiplier will be 18

and the functional disability will be 100% and the compensation under this head will be $\text{Rs.}4000 \times 12 \times 18 = \text{Rs.}8,64,000/-$, which we round off to $\text{Rs.}9,00,000/-$ as a multiplicand is only at $\text{Rs.}4000/-$ per month.

8. The Tribunal has granted compensation in the following manner:

Head of Claim	Amount awarded in Rs.
Loss of earnings	20000
Treatment expenses	64700
Transportation expenses	5000
Damage to clothings	250
Pain and suffering	25000
Loss of amenities	20000
Attendant's charges	10000
Extra nourishment	3000
Disability	367200
Disfiguration and loss of marriage prospects	10000
Total	525150

9. It is clear that the assessment of damages will not be in tune with the physical frame of the victim and his incapacities, disabilities, loss of enjoyment as well as other

factors like amount to be spent for his future treatment, which have not been considered in a proper manner. The vehement plea raised by the learned counsel for the appellant is that he will require the constant assistance of a bystander and a reasonable amount will have to be fixed accordingly. It is also submitted that for loss of prospects of marriage including disfiguration only Rs.10,000/- was granted which requires enhancement properly. It is further highlighted that for pain and suffering undergone by him and which is continuing throughout, a reasonable compensation will have to be granted. Coupled with the same, it is submitted that, there is total loss of enjoyment of life and pleasures of life which also require fixation of proper amount. As regards the future treatment also the learned counsel submitted that the court will have to anticipate the difficulties in future and for covering the expenses towards medical expenses, a suitable amount will have to be fixed. The learned counsel for the Insurance Company submitted that this Court may have to fix the

quantum after considering the total amount claimed by the appellant.

10. In the matter of awarding compensation, going by the judgments of the Apex court in **Nagappa v. Gurudayal Singh [2003 (1) KLT 115 (SC)]** and **Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)]** there is no fetter on the power of the Tribunal and this Court to grant compensation which is proper and just. Therefore in a matter like this where the appellant had suffered injuries at the young age of 21 and is completely laid up, we will have to assess the compensation accordingly.

11. Therefore we re-fix the compensation in the following manner:

Head of Claim	Amount awarded in Rs.
Loss of earnings 4000x10	40000
Treatment expenses	64700
Transportation expenses	7500
Damage to clothings	250
Pain and suffering	100000
Loss of amenities	100000

Head of Claim	Amount awarded in Rs.
Hospital attendant's charges during the treatment period	120x150 18000
Extra nourishment	5000
Compensation for disability	4000x12x18=8,64,000 Round off to 900000
Disfiguration and loss of marriage prospects	75000
Bystander's expenses (continuing and future)	250000
Future treatment	100000
Total	16,60,450 (Rupees sixteen lakhs sixty thousand four hundred and fifty only)

The appellant will have to pay additional court fee for the amount granted by this Court.

The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation and we hold that the Insurance Company will be liable to meet the liability also and we direct them to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months. As far as the amount granted towards future treatment it will not carry

interest. Out of the total compensation to be deposited by the Insurance Company along with interest fixed by this Court, we permit the appellant to immediately withdraw 50% and the balance amount will be deposited in a nationalised bank, for which, we fix the term as five years. We also permit the appellant to withdraw the interest portion on the fixed deposit from time to time. If any situation warrants modification of the above condition, the appellant will be free to approach the Tribunal itself.

The appeal is accordingly 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

shg/