

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

MACA.No. 3005 of 2008 ()

AGAINST THE AWARD IN OPMV 1416/2003 of MACT, IRINJALAKUDA DATED
19-06-2008

APPELLANT/PETITIONER

JOSE ,S/O. POULOSE,
CHUNKAN HOUSE, ALOOR DESOM/VILLAGE AND, POST
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.V.BABY

RESPONDENTS/RESPONDENTS

1. A.V. BABU, S/O. VELAYUDHAN,
ARIMMEL HOUSE, CHELLANCHIRA P.O.

2. BINISH, S/O. BHASKARAN,
PULICKAL HOUSE, POTTA. (DELETED)

3. THE NATIONAL INSURANCE CO. LTD.,
MUNICIPAL SHOPPING COMPLEX, MAIN, ROAD
NORTH PARAVUR.

* RESPONDENT NO.2 DELETED FROM THE PARTY ARRAY AT THE RISK OF the
APPELLANT VIDE ORDER DATED 18.2.2013 IN IA.NO.490/2013.

R3 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.3005 OF 2008

Dated this the 8th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant in O.P.(MV)No.1416/2003 of the Motor Accidents Claims Tribunal, Irinjalakuda. It was tried along with O.P.(MV)No.1340/2003 arising from the same accident. The appellant was accompanying the goods namely cow-dung being transported from Kollankode for agricultural purposes. The driver of the vehicle lost the control of the vehicle while speeding up, as a result of which the tempo van went off the road and hit on a tree. The accident occurred on 17.8.2003. As against the total claim of ₹ 5 lakhs, the Tribunal has awarded ₹ 1,07,400/-.

2. We heard the learned counsel on both sides.

3. The learned counsel for the appellant mainly contended that Ext.A14 disability certificate ought to have been accepted by the Tribunal. It is submitted that the Tribunal did not accept the same in

the light of the fact that Ext.A12 prescription of the year 1999 showed that he had some neurological problems. It is submitted that Ext.A12 is a bunch of prescriptions wherein the crucial one considered by the Tribunal even though there is similarity in the name, the age shown is only 38 and therefore it is evidently produced by a mistake and it relates to another person. It is submitted that there is nothing to suspect Ext.A14 and therefore the disability shown therein as 15% because of the moderate impairment in comprehension should have been accepted. The neurological disability will result in loss of enjoyment in life and amenities of life. It is further submitted that he was treated as an inpatient for a period of 34 days and the loss of income for four months at ₹2,000/- is much less. It is also submitted that the compensation for pain and suffering and discomfort and loss of amenities is also not properly assessed.

4. The learned counsel for the Insurance Company submitted that in the light of Ext.A12, the Tribunal found it difficult to accept Ext.A14.

5. The accident is admitted and the injuries are also admitted.

He had sustained lacerated wound over the elbow 10 cm. in length and another lacerated wound of 15 cm. length over the parietal region. It is clear from paragraph 7 of the judgment that CT investigation of brain revealed extra dural haematoma in the left parietal area, sub duralhaematoma in the right fronto temporal region, sub arachnoid haemorrhage fracture of the left parietal bone and bleeding from the maxillary sinus. Ext.A10 shows that he was in the hospital as an inpatient initially for a period of 20 days and was diagnosed as a case of severe head injury. Ext.A11 discharge card shows that he was admitted and treated in Maria Theresa Hospital, Kuzhikkettussery for a period of 14 days and was admitted with hyper activeness in a disoriented condition.

6. True that in Ext.A12 series one of the prescriptions is dated 7.5.1999. The Tribunal found that it was in relation to the appellant himself. But the verification of the same shows that the age is shown as 38, whereas the age of the appellant is 48. We find from Ext.A14 that assessment of neurological disability is pursuant to the road traffic accident. The injuries sustained by him are mainly to the head and were

of a serious nature. What is assessed is 15% due to moderate impairment in comprehension.

7. In the light of the above, we will be justified in accepting Ext.A14. Since the appellant is an agricultural labourer, purely because of the same there will not be any functional disability. But still there will be loss of enjoyment in life and loss of amenities. The monthly income assessed is only at ₹2,000/- and the accident occurred in the year 2003. Even if ₹100/- per day is calculated, the reasonable amount would be ₹3,000/- and we accept the same. For partial loss of earnings, he will be entitled to get ₹12,000/-.

8. Since he was treated in two different hospitals for a considerable period of 34 days and he had also sustained very serious injuries, the compensation awarded towards pain and suffering is also inadequate. We award a sum of ₹40,000/- towards pain and suffering. For bystander's expenses, ₹3400/- is granted obviously @ ₹ 100/- per day and we enhance the same by ₹200/- per day and the total amount will be ₹6,800/-.

9. The next aspect is regarding the disability compensation.

Of course, 15% neurological disability has been accepted. But it is not shown whether it is functional disability or not. The injuries are liable to be compensated which principle is also well settled. Therefore, we cannot reckon it as a disability which will affect his earning capacity. But it may affect his normal avocation in life to some extent and there will be resultant loss of amenities of life and loss of enjoyment in life. Taking all these factors together, we award a sum of ₹ 40,000/-.

10. Accordingly, the appellant will be entitled to get compensation as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Medical expenses	63000
Transportation	1000
Bystander's expenses	6800
Pain and suffering	40000
Loss of earnings	12000
Disability, discomfort and loss of amenities	40000
Total	162800 (Rupees one lakh sixty two thousand eight hundred only)

11. The amount will carry interest @ 9% per annum from the date of the 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 and the appellant is allowed to withdraw the same.

The appeal is accordingly allowed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

