

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 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 3011 of 2008 ()

AGAINST THE AWARD IN OPMV 350/2002 of MACT, THRISSUR

APPELLANT/PETITIONER:

VELAYUDHAN, S/O RAMAN,
POOVATHINGAL HOUSE, VALLACHIRA, THRISSUR DISTRICT.

BY ADVS.SRI.DILIP J. AKKARA
SRI.B.K.PURUSHOTHAMAN
SRI.AYPE JOSEPH

RESPONDENTS/RESPONDENTS:

1. V.V.VISWAMBARAN, S/O VEDARAJAN
VADAKKATH HOUSE, KIZHAKKEPURAM, ARANATTUKARA
THRISSUR DISTRICT.

2. THE NATIONAL INSURANCE CO.LTD.,
REP. BY DIVISIONAL MANAGER, DIVISIONAL OFFICE
THRISSUR, THRISSUR DISTRICT.

R2 BY ADV. SRI.M.A.GEORGE (B/O,NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.3011 OF 2008

Dated this the 29th day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant aggrieved by the quantum of compensation awarded by the Tribunal. The facts in a nutshell is as follows :

2. On 3.2.2001 at about 8.15 p.m. while the appellant was travelling in a motor cycle, it hit against an autorickshaw bearing Reg.No. KL 8/7812 and in that accident, the appellant sustained severe injuries. Alleging negligence on the side of the driver of the auto rickshaw, a claim petition was moved. Even though a total compensation of ₹1,60,000/- was claimed, the Tribunal only awarded a sum of ₹58,500/- . Aggrieved by the same, this appeal is filed.

3. When the appeal came up for hearing, the learned counsel for the appellant submitted that the injuries are of very grievous nature. It is submitted that the appellant sustained injuries like heavy shock,

lacerated wound 3 x 2 cms. bone deep on left eye brow, lacerated wound 2 x 2.5 cms on right middle finger, lacerated wound 2 x .5 cms. web space between right middle finger and ring finger, lacerated wound 1 x .5 cms. on left ear, lacerated wound 3.5 x .5 cms right sole, lacerated wound 2.5 x .5 cms. on big toe, lacerated wound 1.5 x .5 cms. right second toe, abrasion on right knee, right leg, right forearm and left ear, fracture second metatarsal bone, fracture to third metatarsal bone right foot. It is further submitted that CT brain showed fracture, fracture zygoma, fracture to zygomatic arch, fracture to lateral wall of orbit and cerebral oedema, fracture left maxillary autum, injury to optic nerve. It is the submission that even though such grievous injuries are sustained, the Tribunal did not award adequate compensation.

4. The learned counsel appearing for the Insurance Company submitted that the accident is that of the year 2001. It is the submission that the major injuries are fracture of metatarsal bone and it will not cause any disability, for the said reason the Tribunal had not accepted the disability certificate produced by the appellant.

5. Ext.A4 is the copy of the wound certificate issued by the

Aswini Hospital, Thrissur. In the said document, it can be seen that the appellant was taken to that hospital on 3.2.2001. Therein it is stated that the appellant sustained fracture lateral wall of left orbit, left maxillary autum, left zygoma and zygomatic arch, right foot fracture III metatarsal bone and there is injury to right shoulder. The case of the appellant is that the appellant is a goldsmith by profession and is earning a sum of ₹4,000/- per month.

6. The goldsmith is a skilled worker. Considering the nature of the work involved and other attending circumstances, a sum of ₹3,500/- is considered as his monthly income. The appellant was aged 30 at the time of the accident and therefore the proper multiplier to be adopted will be 17.

7. Thus, the compensation is refixed in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of earnings	14000 (3500 x 4)
Transportation	1000

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Extra nourishment	1000
Damage to clothing	1000
Treatment and Medical expenses	9400
Expenses for bystander	1500
Pain and suffering	30000
Loss of amenities and enjoyment of life, discomforts	30000
Disability	57120 (3500 x 12 x 17 x 8%)
Total	145020 Rounded off to ₹1,45,000/- (Rupees one lakh forty five thousand only)

8. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The Tribunal has already directed that the Insurance Company will be entitled for recovery of the compensation amount from the owner after

deposit. The owner has not challenged the same. Under such circumstances, there is no interference in this regard.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.