

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 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

MACA.No. 3109 of 2008 ( )

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AGAINST THE AWARD IN OPMV 446/2003 of MACT,TRIVANDRUM DATED 29-07-2008  
APPELLANT(S):CLAIMANT

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T.SASIDHARAN NAIR  
EASWARI VILASAM BUNGLOW, TC.37/2222, MANGAD  
THIRUMALA PO., THIRUVANANTHAPURAM.

BY ADVS.SRI.R.NARENDRAN NAIR  
SRI.HARISH R. MENON

RESPONDENT(S):

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1. G.CHRISTUDAS  
CHRIST HOUSE, PAILYODE, KOTTUKAL PO.  
NEYATTINKARA.

2. CHRISTU KUMARAN.N.  
S/O.NESSAYAN CHARMILA VEEDU, ARUVIYODE, KUNNATHUKAL  
NEYATTINKARA.

3. NATIONAL INSURANCE CO.LTD.,  
DIVISIONAL OFFICE, THIRUVANANTHAPURAM  
REP. BY ITS DIVISIONAL MANAGER.

R,R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION  
ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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**M.A.C.A.No.3109 of 2008**  
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**Dated this the 11<sup>th</sup> day of March, 2015**

**JUDGMENT**

**Asha, J.**

The appellant met with an accident on 28.6.2002 when he was standing at a shop near Palottuvila junction, on being hit by an ambassador car which dashed against the said shop. After inpatient treatment for a period of 48 days, he was discharged from hospital and he sustained disability to the tune of 20%.

2. The claim petition was filed seeking compensation to the tune of Rs.3,50,000/-. The Tribunal awarded a sum of Rs.99,250/-. This appeal is filed seeking enhancement in compensation alleging that the amount awarded under various heads are thoroughly inadequate.

3. We heard learned counsel appearing on either side. Learned counsel for the insurance company opposed the claim for enhancement.

4. In support of the claim, the appellant adduced evidence by way

of production of Exts.A1 to A11 documents. The appellant claimed to be working as a security personnel drawing an income of Rs.6,000/- per month. The injuries sustained, as per Ext.A3 issued from the Medical College Hospital, Thiruvananthapuram, is: fracture of both bones of left leg upper 1/3<sup>rd</sup>. He was admitted on 28.6.2002 and discharged on 7.8.2002. Apart from fracture of both bones left leg, he sustained fracture of ulna right also. He underwent treatment of wound debridement, long leg slab and long arm slab followed by open reduction and internal fixation of tibia with plate and screws and bone grafting. He suffered extraction of three teeth also. It can be seen from Ext.A5 discharge card that the long arm cast was removed on 9.9.2002 and fresh long leg cast was given and the X-ray examination on 13.1.2003 shows broken plate, long leg slab was thereafter given and the same was removed on 17.3.2003. Fresh long leg cast was given as the appellant was not willing for a surgery. As per Ext.A8 his disability was certified as 20% as per Mc Bride scale.

5. The Tribunal reckoned the income of the appellant at Rs.2,000/- and awarded a sum of Rs.16,000/- towards loss of earning

for a period of eight months. It is pointed out that the appellant was working as a security-cum-real estate businessman, earning Rs.6,000/- per month. Having regard to the cost of living and wage structure prevailing at the relevant time, we are of the view that the monthly income of the appellant can be fixed at Rs.4,000/-. Therefore, the compensation for loss of earnings will come to Rs.32,000/-. Towards permanent disability, the Tribunal has awarded a sum of Rs.38,400/- adopting the multiplier of 8. It is seen that the appellant was aged 54, since his date of birth as per the SSLC book, as already found by the Tribunal, is 18.8.1947. As per the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC), in the case of those within the age group of 50-54, the multiplier will be 11. Therefore, adopting the multiplier of 11, the compensation under the head of permanent disability will be Rs.1,05,600/- (Rs.4000/- x 12 x 11 x 20/100). The Tribunal has awarded a sum of Rs.500/- towards medical and incidental expenses. It is seen that the appellant has produced bills which cover a sum of Rs.5,514/-. Therefore, we modify the amount under this head and grant a sum of Rs.5,514/-. The

appellant had to undertake several visits even after discharge from the hospital. Therefore, we enhance the amount towards transportation charges to Rs.1,500/-. The Tribunal awarded a sum of Rs.25,000/- towards compensation for pain and suffering. Having regard to the fact that the appellant had undergone a series of treatment on account of the fracture on his arms, legs as well as teeth and having regard to the inconvenience and discomfort he would have suffered for a long time, we enhance the amount under this head to Rs.30,000/-. The Tribunal has awarded a sum of Rs.12,800/- towards compensation for loss of amenities. On account of the disability incurred due to the accident, viz.20% and the injury suffered by him, the appellant would not have been in a position to enjoy the normal amenities in life as before the accident. Therefore, we grant a sum of Rs.30,000/- under this head.

Thus, the award passed by the Tribunal is modified as follows:

| <i>Head of claim</i>  | <i>Amount awarded by the Tribunal (Rs)</i> | <i>Modified award passed by this Court</i> |
|-----------------------|--------------------------------------------|--------------------------------------------|
| Loss of earnings      | 16000                                      | 32000                                      |
| Transport to hospital | 1000                                       | 1500                                       |
| Extra nourishment     | 1500                                       | 1500                                       |
| Engaging a bystander  | 3800                                       | 3800                                       |

| <i>Head of claim</i>            | <i>Amount awarded by the Tribunal (Rs)</i> | <i>Modified award passed by this Court</i> |
|---------------------------------|--------------------------------------------|--------------------------------------------|
| Damage to clothing              | 250                                        | 250                                        |
| Pain and suffering              | 25000                                      | 30000                                      |
| Permanent disability            | 38400                                      | 105600                                     |
| Loss of amenities               | 12800                                      | 30000                                      |
| Medical and incidental expenses | 500                                        | 5514                                       |
| Total                           |                                            | 210164                                     |

(Rupees Two lakhs ten thousand one hundred and sixty four only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

**(T.R. RAMACHANDRAN NAIR, JUDGE.)**

**(P.V. ASHA, JUDGE.)**

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