

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

MACA.No. 406 of 2012 ()

AGAINST THE AWARD IN OPMV 1122/2003 of M.A.C.T., THALASSERY DATED
02-05-2011

APPELLANT/PETITIONER:

ABHIJITH P.V.
S/O.SATHEESHBABU M, AGED 14 YEARS
REPRESENTED BY FATHER AND GUARDIAN SATHEESHBABU M
S/O.LATE CHANDU AGED 50 YEARS JIBIN NIVAS, NELLUNI, P.O
MATTANNUR

BY ADVS.SRI.M.SASINDRAN
SRI.A.ARUNKUMAR

RESPONDENTS/RESPONDENTS:

1. P.M.K.DAMODARAN
PADMALAYAM, P.O.MATTANNUR 670702 KANNUR DISTRICT (OWNER
OF LORRY NO.KL-13/A 5378)

2. KOZHUKUNNON KRISHNAN
S/O.KUNHIRAMAN NAMBIAR KUNHUMVEETIL HOUSE
KOLARI AMSOM PORORA P.O 670 702 (DRIVER OF LORRY NO.
KL-13/A 5378)

3. NATIONAL INSURANCE COMPANY LIMITED KANNUR 670 001
(INSURER)

R3 BY ADV. SRI.S.K.AJAY KUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.406 of 2012

Dated this the 20th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

Appellant, a minor has approached this Court seeking enhancement of compensation. It is a case where the accident has resulted in 90% disability. The appellant was aged 6 years at the time of the accident. The accident occurred on 6.12.2002 at about 5.15 p.m., while he was walking through the extreme side of Thalassery - Mattannur road along with his mother. When they reached Niduvottukunnu at Pazhassi, the offending vehicle a lorry bearing Reg.No.KL-13/A 5378 hit against him and severe injuries were caused. The total claim was for Rs.10 lakhs. The Tribunal has granted an amount of Rs.2,63,000/- as compensation with interest @ 7.5% from the date of filing of the application (22.09.2003).

2. Heard the learned counsel on both sides.
3. The learned counsel for the appellant submitted that it is a

case where the child victim has lost all amenities and pleasures in life since he has been greatly affected by the injuries sustained. He cannot talk coherently. He has got spasticity and inability to walk unsupported and severely diminished mental capacities. Therefore for the whole life he will have to depend upon others. This has been proved in evidence by producing the disability certificate and by examining PW2, the Doctor.

4. Going by the method adopted by the Tribunal, it can be seen that a notional annual income of Rs.15,000/- was reckoned and by adopting the multiplier of 15, loss of future earnings has been assessed at ₹ 2,02,500/-. The Tribunal relied upon the second schedule of the Motor Vehicles Act while coming to such a conclusion.

5. The evidence will show that he was treated in Koyili Hospital, Kannur as inpatient for 35 days. The injuries sustained by him are the following going by the averments in Ground No.C of the appeal memorandum :

- 1) Extensive avulsion of scalp (left)
- 2) Multiple abrasion present on left side of

face, right forearm and

3) Upper part of left pinna is missing.

6. In Ext.A5, after conducting the examination on the body, the following impressions have been recorded :

- 1) Right frontal lobe haemorrhage
- 2) Ventricular haemorrhage
- 3) Linear fracture of frontal and left parietal bone with depression.
- 4) Penumocranium
- 5) Focal brain swelling in left fronto parietal lobe

7. The medical certificates including the disability certificates also will show the gravity of the situation. The certificate Ext.A8 records 100% disability with tube feeds which was issued on 20.12.2005. The following are the disabilities noticed :

“ Presently, he has got the following disabilities :

- 1) Inability to talk coherently
- 2) Spasticity and inability to walk unsupported
- 3) Severely diminished mentation.”

8. The disability certificate issued by the Medical Board on 12.8.2010 assessed the permanent disability as 90%. They have also recorded the disability to talk and has recorded that he is dependent on others for walking and in taking food. Therefore, the physical disability will show that he cannot walk freely without support, he cannot speak coherently and his mental capacity has also been greatly affected. All these elements will have to be assessed properly for awarding compensation.

9. As far as the monthly income is concerned, for the purpose of assessment of compensation for disability, it can be taken only in a notional way. The Tribunal has fixed it only at Rs.15,000/- relying upon the schedule to Motor Vehicles Act. The schedule was finalised in the year 1988 and the accident herein occurred in 2002. According to us, due to various aspects including the increase in price etc., a fair amount will have to be fixed by the Court. Therefore we fix it at Rs.2,500/- per month, which is equal to Rs.30,000/- per year. The multiplier being 15, the compensation for permanent disability will be Rs.4,05,000/- (30000 x 15 x 90%). The second aspect is regarding the

medical expenses. The claim was to the tune of Rs.57,925/-. The Tribunal did not grant an amount of Rs.22,000/- represented by the receipt dated 10.1.2003 paid for Doctor's charges for neuro operation, assistants, follow up etc. It appears that the argument raised by the learned counsel for the Insurance Company that Doctor's charges have been charged under different bills was accepted by the Tribunal. But on verification of the bills by us, it is seen that the hospital has not issued separate bills for Doctors charges. Apart from the same, Rs.20,000/- is claimed for surgery charges, assistance and follow up, which is a reasonable amount. Thus, we grant the said amount also along with other items. Thus, the medical expenses will be Rs.57,925/- in total. As far as bystander's expenses are concerned, we grant @ Rs.200/- per day for 35 days ie. Rs.7,000/- and for extra nourishment Rs.6,000/- and towards transport expenses Rs.4,000/- are granted.

10. The child will require continuous medical treatment which is evident from the treatment records. A reasonable amount will have to be provided for future medical expenses. We fix an amount of Rs.50,000/- towards future medical expenses. Apart from the same, he

requires assistance of a bystander throughout his life because of his inability to walk freely. All the disabilities will be there throughout his life also. He has lost all his pleasures in life as a child. All these aspects will have to be considered while assessing compensation for pain and suffering and loss of amenities and we grant Rs.1,00,000/- each for pain and suffering and loss of amenities and provide Rs.50,000/- towards a bystander.

11. Accordingly, the total compensation is refixed in the following manner :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transportation	4000
Extra nourishment	6000
Bystander's expenses (35 x 200)	7000
Bystander for life	50000
Medical expenses	57925
Future medical expenses	50000
Permanent disability	405000
Pain and suffering	100000
Loss of amenities	100000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Total	779925 Rounded off to ₹780,000/- (Rupees seven lakhs eighty thousand only)

12. We grant interest @ 9% per annum from the date of filing of the petition for the total amount except the amount granted towards future medical expenses for which the interest is granted from the date of the award of the Tribunal namely 2/05/2011. We also confirm the finding that the Insurance Company is liable to satisfy the award and we direct the Company to deposit the amount within a period of three months.

13. We find from the award that the Tribunal has released only Rs.50,000/- in the name of the father as per the award and the balance amount was directed to be deposited till the child attains majority. Going by the age shown in the award of the Tribunal, the appellant was aged 6 years at the time of the accident namely on 6.12.2002. Therefore he will be aged between 18 -19 as of now. By producing proof of date of birth and if the Tribunal is satisfied that he has become

a major, the amount as awarded by the Tribunal will be released along with interest granted by the Tribunal immediately. As regards the enhanced compensation granted by this Court, we permit the father or the appellant as the case may be to withdraw 50% of the same and the balance amount with interest will be deposited in a nationalized bank for a period of five years in the name of the appellant. We also permit the appellant to withdraw interest on quarterly basis from the said amount. If any modification of the above conditions for disbursement are required, we permit the appellant to move the Tribunal itself.

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

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.