

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 17TH DAY OF JANUARY 2022 / 27TH POUSHA, 1943

MACA NO. 1718 OF 2019

AWARD DATED 30.01.2019 IN OP(MV) NO. 710/2017 OF ADDITIONAL
DISTRICT COURT, KOZHIKODE / I ADDITIONAL MOTOR ACCIDENT CLAIM
TRIBUNAL, KOZHIKODE.

APPELLANT/PETITIONER:

PRAMODAN@PRAMOD

AGED 52 YEARS

S/O. KRISHNANUNNI NAIR, THAZHETH PARAMBATH HOUSE,
MYDHILI KRISHNA, CHEVAYUR, CHEVARAMBALAM,
KOZHIKODE-673 017.

BY ADV AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS:

- 1 MANAGING DIRECTOR,KSRTC FORT, THIRUVANANTHAPURAM
PIN-695 023.
- 2 SURESH E.B,
S/O. T.K. BHASKARAN, EZHAPARAMBIL HOUSE, KARIMBA
P.O, MANNARKAD, PALAKKAD-678 597.
- 3 NEW INDIA ASSURANCE COMPANY LTD,
DO-II, II FLOOR, REMA PLAZA, NEAR AYYAPPAN COIL, SS
COIL , SS COIL ROAD, THAMAPANOOR-695 001.

BY ADVS.

SRI.P.C.CHACKO, SC, KERALA STATE ROAD TRANSPORT
CORPN.

SRI.LAL K.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 18.12.2021, THE COURT ON 17.01.2022 DELIVERED THE
FOLLOWING:

C.S.SUDHA, J

M.A.C.A.No. 1718 of 2019

Dated this the 17th day of January, 2022

JUDGMENT

The appellant is the petitioner in OP(MV) No.710/2017 on the file of the Additional Motor Accidents Claims Tribunal-I, Kozhikode ('the Tribunal'). The respondents in the appeal are the respondents before the Tribunal. The parties herein will be referred to as described before the Tribunal.

2. The petitioner filed claim petition under Section 166 of the Motor Vehicles Act, 1988 ('the Act') claiming compensation for the injuries sustained by him in a traffic incident which took place on 24.10.2016 at 11:00 a.m. According to the petitioner, while he was riding his motor cycle bearing registration No.KL-11/AS-8069 from Chevarambalam-Pantheerakavu, a KSRTC bus bearing registration No.KL-15/A-0590 driven by the second respondent in a rash and negligent manner knocked him down, due to which he sustained

grievous injuries resulting in amputation of his right leg below the knee. At the time of the incident, he was working as a Security Officer at Vythiri Holiday Resort in Wayanad, drawing a monthly salary of `20,000/-. As a result of the injuries sustained, he was hospitalized on three occasions for a total period of 53 days. Due to the injuries sustained, he is unable to work as a Security Officer. He has been unable to enjoy the amenities of life apart from suffering from dis-figuration due to amputation. Considerable amount of money has been spent for his treatment and much more is required for his future treatment. The petitioner claimed compensation under various heads totalling an amount of `79,42,000/-, which was limited to `50,00,000/-.

3. The first respondent, KSRTC, filed objections contending that the incident occurred due to the rash and negligent driving of the petitioner and that the second respondent, the driver, was driving very carefully and at a moderate speed. According to the first respondent, the bus had a valid insurance policy at the relevant time. The claim made is excessive. If at all any amount is payable to the petitioner, the third respondent-insurer is liable for the same.

4. The second respondent, driver, entered appearance but did not file any objections or contest the matter.

5. The third respondent, insurer, admitted that the vehicle had a valid insurance policy. According to the third respondent, the claim is excessive. There was no rashness or negligence on the part of the second respondent. On the other hand, it was the petitioner who was rash and negligent in driving his vehicle. The third respondent also contended that if at all they are liable, the liability is restricted to the policy conditions, beyond which they are not liable.

6. On completion of the pleadings, opportunity was given by the Tribunal to the parties for adducing evidence. The petitioner examined himself as PW1 and Exts.A1 to A9 and C1 were marked. Ext.A10 was marked subject to the objection raised by the third respondent. No oral or documentary evidence was adduced by the respondents.

7. The Tribunal after considering the pleadings and evidence on record, directed the third respondent to deposit an amount of `18,87,906/- towards compensation payable to the petitioner within a period of two months from the date of the order with interest at the

rate of 9% per annum from the date of petition till the date of deposit. Aggrieved by the quantum of compensation awarded, the petitioner is before this Court in this appeal.

8. Heard Sri.A.V.M.Salahuddeen, the learned counsel appearing for the appellant/petitioner and Sri.Lal.K.Joseph, the learned counsel appearing for the third respondent.

9. The only point that arises for consideration is whether the quantum of compensation awarded by the Tribunal is a fair and reasonable sum.

Notional Income

10. The petitioner contended that at the time of the incident, he was working as Security Officer drawing a monthly salary of `20,000/-. In support of the said contention, he relied on Ext.A10 as per which he was earning an amount of `20,000/- per month. The marking of Ext.A10 was objected to by the third respondent and therefore the Tribunal is seen to have marked the document subject to the objection raised. No steps seem to have been taken by the petitioner to prove Ext.A10 by examining the person who issued the same. Hence the Tribunal declined to rely on Ext.A10. The petitioner

has been unable to establish that the Tribunal went wrong in refusing to rely on Ext.A10.

11. In the absence of any evidence to establish the monthly income of the petitioner, the Tribunal taking into account the fact that he is an ex-service man, fixed the monthly income at `10,000/- per month. This is challenged by the petitioner. Following the yardstick laid down by the Apex Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236]** and taking into account the fact that the incident took place in the year 2016, the notional income can be fixed as `10,500/- per month. The Tribunal granted 10% increase towards loss of future prospects relying on **National Insurance Co. Ltd. v. Pranay Sethi (2017(5) KHC 350)**. There is no dispute regarding the multiplier '11' adopted by the Tribunal. Therefore, the notional income is reassessed as `11,550/- (`10,500} + \text{`1,050).

Permanent Disability/Loss of future income/Loss of earning

12. As per Ext.C1 disability certificate issued by the Medical Board, the petitioner has 70% disability. The petitioner had lost his right leg below the knee in the incident. Therefore, considering the

fact that he is an ex-service man and that in all probability he could have secured employment as a Security Officer or a similar job which would involve use of both upper and lower limb, the Tribunal fixed his occupational permanent disability at 80%. In the appeal memorandum, it is contended that, as the petitioner sustained 70% permanent disability, he is unable to continue in his job or do any other job. In such circumstance, the Tribunal ought to have found that he had sustained 100% functional disability. In support of this argument, reference is made to the case of **National Insurance Co.Ltd. v.Subhasis Manna (2020 KHC 4330)**. In the said case, the injured was working as a Salesman in a medical shop earning an amount of `4,200/- per month with annual increment of `250/-. As a result of the incident he lost his job. As per the disability certificate the claimant had suffered permanent disability to the extent of 70%. The Tribunal on the finding that he was unable to travel without the assistance of an escort and earn his livelihood independently, assessed his functional disability as 100%. This finding was confirmed by the High Court. Relying on the aforesaid decision, the argument advanced is that the Tribunal in this case also ought to have assessed

the functional disability of the claimant as 100%.

13. I am unable to agree to this argument because it was on the basis of the evidence adduced that 100% functional disability was assessed in the aforesaid case. A reading of the decision would show that the Tribunal on the finding that the claimant was unable to travel without the assistance of an escort and earn his livelihood independently, assessed his functional disability at 100%, which was confirmed by the High Court. In the instant case, on the basis of the evidence adduced, the Tribunal has assessed the functional disability to be 80%. I do not find any infirmity in the said conclusion. The petitioner therefore would be entitled to `12,19,680/- ($11,550 \times 12 \times 11 \times 80 / 100$) under this head.

Loss of earnings

14. The petitioner had been hospitalized for a period of 53 days. The Tribunal found that a further period of at least 37 days would have been necessary for the petitioner for recuperation/convalescence. Therefore, loss of earnings of `33,000/- was granted. According to the petitioner, a period of 90 days fixed is too short a period and a period of atleast 24 months or two years should have

been taken as the period of convalescence. Reference was made to the case of **Kavitha v. Deepak [(2012) 8 SCC 604]** in support of the argument. Here again I disagree with the argument advanced as the fact situation in the reported decision is completely different from the case on hand. The third respondent does not dispute the injuries or the fact that the petitioner's right leg had to be amputated. Therefore, a period of three months given for convalescence appears to be too short a period. A period of six months appear to be reasonable. Therefore, loss of earnings on this ground would work out to `69,300/- (`11,550 x 6 months).

Bystander expenses and Extra nourishment

15. The petitioner claims an amount of `15,000/- as bystander expenses. Expenses at the rate of `200/- per day for 53 days, totalling an amount of `10,600/- was granted by the Tribunal. According to the petitioner, this is too low an amount and bystander expenses at the rate of atleast `500/- per day ought to have been granted. This is a case in which the petitioner was an inpatient for 53 days. Therefore, bystander expenses at the rate of `300/- per day appears to be reasonable. Hence, the amount he would be entitled under this head is

₹ 15,900/- (53 x ₹ 300/- per day).

16. The petitioner claimed ₹ 15,000/- for extra nourishment. The Tribunal granted it at the rate of ₹ 150/- per day. According to the petitioner, an amount of ₹ 500/- per day ought to have been granted under this head. I disagree as the amount of ₹ 150/- per day granted by the Tribunal appears to be quite reasonable.

Other heads of compensation

17. I find that reasonable and just compensation has been awarded with respect to the other heads of claim and therefore, the same does not require any re-assessment.

18. Hence, I hold that the appellant/petitioner is entitled to enhanced compensation as given in the table below.

Sl.No.	Head of Claim	Amount awarded by the Tribunal (in ₹)	Amount modified by this Court (in ₹)	Amount which the appellant/petitioner is entitled to (in ₹)
1	Loss of earnings	33,000/-	69,300/-	69,300/-
2	Transportation	10,000/-	-	10,000/-
3	Extra nourishment	7,950/-	-	7,950/-
4	Bystander expenses	10,600/-	15,900/-	15,900/-
5	Damage to clothings and articles	2,000/-	-	2,000/-
6	Medical and treatment	1,07,066/-	-	1,07,066/-

	expenses			
7	Future treatment expenses	35,690/-	-	35,690/-
8	Permanent occupational disability	11,61,600/-	12,19,680/-	12,19,680/-
9	Pain and sufferings	1,20,000/-	-	1,20,000/-
10	Loss of amenities	3,50,000/-	-	3,50,000/-
11	Dis-figuration	50,000/-	-	50,000/-
	Total	18,87,906/-		19,87,586/-

In the result, the appeal is partly allowed with costs. The appellant/petitioner is awarded a total compensation of ` 19,87,586/- with interest at the rate of 9% per annum from the date of the claim petition till the date of deposit. The third respondent is ordered to deposit the compensation with interest and costs before the Tribunal within a period of 60 days from the date of receipt of a certified copy of this judgment. On deposit of the amount, the Tribunal shall disburse the compensation amount to the appellant in accordance with law.

**Sd/- C.S.SUDHA
JUDGE**

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