

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY ,THE 28TH DAY OF JANUARY 2019 / 8TH MAGHA, 1940

M.A.C.A.No. 1359 of 2015

AGAINST THE AWARD IN OPMV 730/2006 of MOTOR ACCIDENT CLAIMS  
TRIBUNAL ,PUNALUR DATED 31-12-2014

APPELLANT/PETITIONER:

S.ANITHA KUMARI  
SANISH BHAVAN, MELKULANGARA, VAYAKKAL, VALAKOM  
VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS/RESPONDENTS:

- 1 PRASANNA V.NAIR  
V.P.HOUSE, KODIKKONAM, NILAMEL, KOLLAM DISTRICT, PIN:  
691 535.
- 2 SOUMYA .V  
V.P.HOUSE, KODIKKONAM, NILAMEL, KOLLAM DISTRICT, PIN:  
691 535.
- 3 SWATHY V.  
V.P.HOUSE, KODIKKONAM, NILAMEL, KOLLAM DISTRICT, PIN:  
691 535.
- 4 PADMAVATHY AMMA  
V.P.HOUSE, KODIKKONAM, NILAMEL, KOLLAM DISTRICT, PIN:  
691 535.
- 5 THE ORIENTAL INSURANCE COMPANY LIMITED  
PUNALUR, KOLLAM, PIN: 691 305.

BY ADVS.  
SRI.GEORGE CHERIAN (SR.)  
SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON  
28.01.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal is preferred against the award in OP(MV)No.730 of 2006 of Motor Accidents Claims Tribunal, Punalur by the injured. Appellant sustained injuries in a motor accident and the Motor Accidents Claims Tribunal awarded compensation Rs.18,13,665/- to the victim. Being dissatisfied with the award amount, the injured preferred this appeal.

2. It would be relevant and useful to mention the facts leading to this accident. The accident was on 25-12-2005 at Nilamel on the Thiruvananthapuram-Angamali M.C.road. Appellant was travelling in a car KL-2Q-6764, when they reached at Nilamel junction, a jeep KL-01D-8731 driven in a rash and negligent manner hit against the car. As a result, appellant and other passengers sustained serious injuries. Immediately they were removed to hospital. The driver of the jeep died in the accident. The first respondent is the owner of the vehicle. Respondent 1 to 4 contested the matter by filing written statement. The insurer admitted the insurance of the vehicle.

3. To prove the accident and the injuries, claimant

examined PW1 to PW3. PW1 is the injured, PW2 is the doctor who treated the injured and PW3 gave physiotherapy treatment. The documentary evidence consist of Ext. A1 to A34. Respondent was examined as RW1 and his documents were marked as Ext.B1. This claim was tried along with OP(MV)No.710 of 2006 and the petitioner in OP(MV)No.710 of 2006 was examined as PW1.

4. Apex Court in ***Yadava Kumar v. D.M. National Insurance Co. Ltd. (2010 (8) SCALE 567)*** reiterated the principle in relation to the assessment of damages for personal injuries cases as follows:

*" 17. While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW1 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and a consequential loss of income is the natural outcome.*

*18. It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and*

*equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field.*

*Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable (See **Mrs. Helen C. Rebello and Ors. v. Maharashtra State Road Transport Corpn. and Anr.** MANU/SC/0621/1998: AIR 1998 SC 3191).*

*19. This Court also held that in the determination of the quantum of compensation, the Court must be liberal and not niggardly in as much as in a free country law must value life and limb on a generous scale (See **Hardeo Kaur and Ors. v. Rajasthan State Transport Corporation and Anr.** MANU/SC/0235/1992: (1992) 2 SCC 567).*

*20. The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation”.*

5. The accident was not disputed by the insurer in the lower court. Other respondents also did not dispute the

accident before the Motor Accidents Claims Tribunal. In this appeal also they have no dispute. No appeal or cross appeal was preferred by the insurer against the award. Therefore the dispute is with regard to the quantum alone. In personal injury cases the compensation has to be assessed separately as pecuniary and special damages. The object behind this is to compensate the injured so far as money can compensate. When compensation is to be awarded for pain, suffering and loss of amenities in life, special circumstances of the claimant have to be taken into account. Amount of compensation for non-pecuniary loss is not easy to determine, but award must reflect that different circumstances have been taken into consideration. Hence, the multiplier method has to be followed to calculate pecuniary loss upon annual basis. The appellant contended that she sustained 79% disability. Now she is fully bedridden and unable to do any work. She completed \* B.Ed, while preparing for examination she met with this accident. Immediately after the accident she was admitted at KIMS hospital, Thiruvananthapuram. Ext.A9 is the discharge summary. Ext.A10 is the Medical Certificate issued from

KIMS hospital. Ext.A7, A8, and A11 are treatment records issued from Government Ayurvedic College, Thiruvananthapuram. Ext.A6 disability certificate shows 79% permanent disability. But the learned Tribunal took 50% permanent disability.

6. Apex court in **Raj Kumar v. Ajay Kumar [2011(1) KLT 620 (SC)]** held as follows:

*“where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be*

*assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.*

Ext.A9 discharge summary shows she was admitted in the hospital on 18/11/2009. Swelling in left axilla and left thigh. H/O RTA 4 years back. Known case of (R) hemiparesis. Seizures – last episode 4 months back. Patient was evaluated as per protocol. Cleared from Neurosurgery side. Excision axillary accessory breast + Excision swelling (L) thigh done under GA on 18-11-2009. Ext.A6 disability certificate shows that she was allegedly involved in a road traffic accident on 25-12-2005. She had sustained major head injury. She underwent a major surgical procedure of the brain which was for life saving. She made a very slow

recovery over the next few months with severe residual disability. Presently she has Aphasia and Right hemiparesis which seriously interferes with her day to day activities. In addition she has cometic disfigurement produced by the surgical procedure on her skull. Considering the above factors, I certify that consequent to the neurological injury that she has sustained she has a permanent disability of 79% as per the DCHS-WHO-AIIMS manual. Ext.A10 shows she had severe head injury with left frontotemporal depressed fracture with an underlying contusion. SAH and fracture of the lateral wall and roof of the left orbit. She underwent emergency elevation of the depressed fracture, decompression of the contusion and dural repair on 25-12-2005.

7. The assessment of compensation in permanent disability case would differ from person to person according to the nature of injury. There can be no uniform standard and yardstick provided for assessing such compensation. When two persons sustain similar injury, that can attract the same compensation, but the heads under which, compensation can be attributed are different. It is settled



law that compensation for injury claims would be higher than that in death cases. The reason is that the injured has to suffer disability for the remaining period of his life. Generally in practical terms it is found that discretion vested in assessment has to be on the basis of injury sustained to the victim and also on the nature of evidence in that case. The injured was a degree holder. The learned Tribunal took Rs.8,000/- as her monthly income. No evidence has been adduced in the lower court to prove the income. Therefore the income taken by the Tribunal is confirmed. But in view of Pranay Sethi, 40% has to be added towards future prospects. For calculating disability compensation, the monthly income is Rs.11,200/- (8,000+3,200). The disability compensation is  $\text{Rs.}11,200 \times 12 \times 18 \times 79/100 = \text{Rs.}19,11,168/-$ . The learned Tribunal awarded Rs.8,64,000/- and the balance amount is Rs.10,47,168/-.

8. Apex court in ***R.D. Hattangadi v. M/s. Pest Control (India) Pvt. Ltd. and others*** held as follows:

*“damages to be assessed separately as pecuniary and special damages - the object is to compensate injury so far as money can compensate - when compensation is to be awarded for pain, suffering*

*and loss of amenity of life special circumstances of claimant have to be taken into account - amount of compensation for non-pecuniary loss not easy to determine but award must reflect that different circumstances have been taken into consideration”.*

She produced additional medical bill for Rs.3,24,132/- hence, those medical bills are marked as Ext.A35 series, and that amount is awarded for medical expenses. Rs.75,000/- already granted, towards medical treatment that amount is to be deducted, and the balance amount is Rs.2,49,132/- (Rs.3,24,132-75,000). The injuries shows that further nursing support is necessary throughout her life. Towards future nursing charge award Rs.1,00,000/-, bystander expense Rs.1,00,000/- and future medical treatment another Rs.3,00,000/- is awarded. The claimant is entitled to get an enhanced compensation of Rs.17,96,300/- (Rupees Seventeen Lakhs Ninety Six Thousand and Three Hundred only) \* with 9% interest and proportionate cost in addition to the award amount. It is made clear that the claimant is not entitled to get 9% interest towards Rs.5,00,000/- ie, the sum of the amounts awarded for future nursing charge

Rs.1,00,000/-, bystnader expenses Rs.1,00,000/- and future medical treatement Rs.3,00,000/-. The insurer is directed to satisfy the award within 30 days from the date of receipt of a copy of this judgment, failing which it will carry 12% interest and cost from the date of default.

This appeal is disposed of, as above.

Sd/-

**P.D.RAJAN,  
JUDGE**

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\* Clerical mistake corrected as per order dated 20.03.2019 in I.A.No. 2/2019.

Sd/-

**P.D.RAJAN,  
JUDGE**

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