

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 30TH DAY OF JANUARY 2024 / 10TH MAGHA, 1945

MACA NO. 2221 OF 2013

AGAINST THE AWARD DATED 18.07.2013 IN OP(MV)NO.211/2000 OF

MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

APPELLANT/PETITIONER:

M.MUHAMMED SAJID @ SAJI, AGED 43 YEARS
S/O. MUHAMMED SHAJI, SAJI MANZIL, EAST OF
VALLIKKEEZHU TEMPLE, KAVANADU P.O., KOLLAM-3.

BY ADV SRI.ESM.KABEER

RESPONDENTS/RESPONDENTS:

- 1 KAYAPOO, AGED 43 YEARS
S/O. ABDUL KHADER, MANNATH PUSHPATHARA HOUS, BEHIND
MANNATH SCHOOL, POONTHOP WARD, ARYAD SOUTH VILLAGE,
ALAPPUZHA-688 017.
- 2 K.V.BABICHAN, S/O. VARGHESE, KITHIRAKKARA PARAMBIL,
NEAR CHAIN BRIDGE, ALAPPUZHA-688 001.
- 3 NATIONAL INSURANCE COMPANY
REPRESENTED BY ITS BRANCH MANAGER, ALAPPUZHA-688
001.

BY ADV SEBASTIAN VARGHESE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 30.01.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

ZIYAD RAHMAN, A.A, J

M.A.C.A No. 2221 of 2020

Dated this the 30th day of January, 2024

JUDGMENT

The appellant was the petitioner in O.P.(M.V.) No.211/2000 on the files of the Motor Accident Claims Tribunal, Alappuzha.

2. The said claim petition was submitted by him seeking compensation for the injuries sustained in a motor accident that occurred on 15.09.1994. According to him, the accident occurred when the motorcycle ridden by him was hit by an autorickshaw driven by the 1st respondent in a rash and negligent manner. The 2nd respondent was the owner of the said autorickshaw and it was insured with the 3rd respondent. The appellant was aged 34 years at the time of the accident and he was a B.Tech Degree holder and was working as Naval Architect in a private establishment with a monthly income of Rs.10,000/-. According to him, he sustained very serious injuries in the accident and it ultimately resulted in permanent disablement which prevented him from continuing his avocation. The claim petition was thus submitted in such circumstances,

seeking a total compensation of Rs.35,00,000/-.

3. The 1st and 2nd respondents were set ex parte, and the claim was resisted only by the 3rd respondent, the insurer of the autorickshaw. Even though they admitted the coverage of policy for the said vehicle, they denied any negligence on the part of the 1st respondent in driving the autorickshaw. According to them, the accident occurred only due to the negligence of the appellant himself. The quantum of compensation claimed by the appellant was also disputed. Initially, the Tribunal passed an award allowing the appellant to recover an amount of Rs.8,05,000/- as compensation from the 3rd respondent. The said award was challenged in appeal by the 3rd respondent insurer in M.A.C.A. No.2/2008, which was disposed of as per judgment dated 06.07.2012. The said appeal was filed mainly contending that the "illness of avascular necrosis", which was the cause of physical disability of 50% as assessed by the Medical Board, was, according to the insurer, not due to the injuries sustained in the accident, as the same was developed only in the year 1999 whereas the accident occurred in the year 1994. After considering the said contention,

this court felt that the question could be answered only after a further and deeper enquiry. Accordingly, the award passed by the Tribunal was set aside and remanded to the Tribunal for fresh disposal. Later, R.P.No.961/2012 was submitted by the appellant herein for reviewing the order by highlighting apprehension to the effect that, as the appeal was disposed of without hearing him, some of the observations made in the appeal are likely to cause prejudice to him. This court passed an order on 14.02.2013 in R.P. No.961/2012 in M.A.C.A. No.2/2008 to the effect that none of the observations made by them in the award will affect the contentions of the appellant herein, and the Tribunal was directed to consider the issue untrammelled by any of the observations. Accordingly, the matter was decided afresh by the Tribunal.

4. The evidence as of now consists of oral testimonies of PWs 1 to 5 and as documentary evidence Ext.A1 to A17 were marked from the side of the appellant. No evidence was adduced from the side of the respondents.

5. After the trial, the Tribunal arrived at the finding that the avascular necrosis suffered by the appellant has a nexus

with injuries sustained in the accident, and therefore, it was held that he is entitled to compensation for the same. Even though the percentage of disability was 50%, as certified by the Medical Board in Ext.A7 was accepted while assessing the compensation, the Tribunal took the percentage of disability as only 25%, for the reason that the said disability did not affect his occupation. The monthly income was fixed at Rs.10,000/-, which was in tune with the salary certificate produced by the appellant. The compensation was calculated accordingly and an award was passed permitting the appellant to recover an amount of Rs.7,03,000/- (Rupees seven lakhs three thousand only) with interest @ 7.5% per annum from the date of petition till realisation with proportionate costs. The appellant has come up with this appeal in such circumstances seeking enhancement of compensation as, according to him, the percentage of disability fixed by the Tribunal was not proper, and he also seeks enhancement of compensation in other heads.

6. Heard Sro E.S M.Kabeer, the learned counsel for the appellant and Adv.Sri.Sebastian Varghese, the learned counsel appearing for the third respondent- Insurance Company.

7. The main contest in this case relates to the quantum of compensation. In the earlier round of litigation, this court set aside the award originally passed by the Tribunal and remanded the matter to the Tribunal, with the direction to the Tribunal to particularly consider whether the avascular necrosis suffered by the appellant had any nexus with the injuries sustained in the accident. It is seen from the award passed by the Tribunal that, by placing reliance upon the medical evidence in the form of Exts.A7, A9, A16 and A17 coupled with the oral testimonies of P.W.s 4 and 5, a categorical finding was entered into to the effect that, the same was the result of the accident. Since the said finding is not under challenge at the instance of the third respondent, I do not find it necessary to go deeper into the issue.

8. However, despite arriving at the said finding, the tribunal proceeded to determine the compensation by considering the occupational disability as 25% only. In Ext.A7 disability certificate, the percentage of disability certified by the doctor was 50%. This is the main issue to be considered in this case. When the learned counsel for the appellant contends that

the scaling down of the percentage of disability, was not proper, the learned counsel appearing for the third respondent-Insurance Company would contend that the said assessment was done by taking note of the fact that the nature of disability would not affect the occupation of the appellant, which was that of a Naval Architecture.

9. After carefully considering the entire materials available on record including the medical evidence as well as the evidence of PW.s 1 to 3, I find force in the submissions made by the learned counsel for the appellant in this regard. It is to be noted that PW1 was a person who studied with the appellant, and according to him, both of them were working in the same establishment at the time when the accident occurred. His statement is to the effect that, consequent to the injuries, the bright prospects in his career was adversely affected. PW1 further points out that the people who were working with him or studying with him, including PW1, managed to obtain very good employment in various establishments, in the country and abroad, with very high salaries. He also categorically stated that the nature of injuries, which restricted the movements of the

appellant substantially, affected his capacity to carry out the obligations attached to the employment of a naval architect, as the same includes climbing of the ladder and visiting sites. PW2 is the appellant himself; he also reiterated the said aspects in his deposition. He also stated that consequent to the injuries sustained, he lost his employment and was denied the opportunities of placements in good establishments. PW3 is the officer of the private firm in which the appellant was working at the time of the accident, and he issued the salary certificate as Ext.A13. He categorically stated that after the accident, the services of the appellant were terminated. It is also discernible from his evidence that the termination of his services was due to the injuries sustained in the accident. Thus, from the analysis of the entire materials, it is evident that the injuries sustained by the appellant and the consequential disability, had a serious impact on his life as well as on his profession. The evidence of PW1 and PW3 are to the effect that the appellant could not continue his avocation and he had to practically forget about the good prospects relating to the career advancements, like those the PW1 could achieve with the very same educational

qualification. In such circumstances, the finding of the Tribunal, to the effect that the disability sustained by the appellant will not affect the occupational capacity of the appellant, cannot be upheld and has to be interfered with. The medical records would clearly indicate that the appellant suffered avascular necrosis, which affects the movement of the hip as it generates pain. The said illness arises from the lack of blood supply to the bones and the Tribunal had already found that the same was consequent to the injuries sustained in the accident. The evidence of PW5, the doctor who treated the appellant from 1994 onwards, categorically deposed that, as part of the treatment and to avoid severe pain, the surgery has to be performed by which the movements have to be restricted. The appellant had already undergone such surgery as well. PW5 also deposed that the appellant has the difficulty in sitting in a chair, climbing stairs and it is impossible for him to sit on the floor etc. These consequences will certainly affect the capacity of the appellant to fulfill the obligations attached to the employment of an able architecture. In other words, the same certainly affects the quality of the work he could carry out, and it will have a

serious impact on his personal life as well. All these serious injuries and disability were sustained by the appellant at the age of 34 years, and therefore, the same has to be compensated adequately. In such circumstances, I am of the view that the finding of the Tribunal reducing the percentage of the disability certified by the panel of doctors in Ext.A7 certificate was not proper and for assessing the compensation, 50% of the disability certified therein has to be accepted.

10. The next aspect relates to the question whether the future prospectus is to be taken into consideration or not, while assessing the compensation for physical disability. As observed above, the evidence of P.W.s 1 to 3 would clearly indicate that the impact of physical disability sustained by the appellant includes the termination of his employment. It also came out as evidence that the valuable opportunities for career advancement were lost to the appellant. While assessing the compensation,, the young age of the appellant, which was 34 years at the time of the accident, is also to be taken into account. When all these aspects are taken into consideration, I do not find any reason to deny the consideration of future prospectus for assessing

compensation. In **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]**, the proper addition towards future prospectus contemplated for persons aged below 40 years is 40%. Therefore, that addition has to be made in this case as well. Thus, while reassessing the compensation with the above revised monthly income with future prospectus and the physical disability as 50%, the compensation under this head would come to Rs.13,44,000 $[(10,000 + 40\%) \times 12 \times 16 \times 50/100]$. The amount already awarded by the Tribunal under this head is Rs.5,10,000/-; thus, additional compensation would come to Rs.8,34,000/-.

11. Besides the same, the appellant was granted compensation under the head of pain and suffering and loss of amenities at the rate of Rs.25,000/- each. Considering the serious nature of the injuries and the impact on his personal life as well as the profession, I am of the view that amounts awarded under both heads require revision. Considering the fact that this is an accident that occurred in the year 1994, I deem it appropriate to grant a further sum of Rs.10,000/- each under this head. Accordingly, the total additional compensation is

determined to be Rs.8,54,000/-[834000+10000+10000].

12. While granting additional compensation, I am conscious of the fact that, the learned counsel appearing for the appellant raised a contention that, even though in the earlier round of litigation, an award was passed by the Tribunal, granting the compensation of Rs.8,05,000/- (Rupees eight lakhs five thousand only), the said award was not challenged by the appellant but it was challenged at the instance by the learned counsel for the third respondent-Insurance Company alone. Therefore, it was contended by the learned counsel for the third respondent that, the appellant cannot raise a challenge with regard to the amount of compensation, which was already fixed as per the earlier award. However, I am not inclined to accept the said contention for more than one reason. Firstly, in the appeal filed by the Insurance Company, even though the challenge was with respect to the nexus of the injuries and the avascular necrosis suffered by the appellant, this court set aside the award in its entirety, and the matter was remanded back to the Tribunal. Secondly, in the review petition submitted by the appellant herein, this court passed a further direction that, for

all the observations made therein, the Tribunal has to decide all the issues untrammelled by any of the observations made therein. Besides the above, the Tribunal and this court are under an obligation to ensure 'just compensation' to the victim of the motor accident, and the technicalities should not stand in the way of ensuring the said compensation. In this case, the tribunal scaled down the percentage of disability without any justifiable reason. When such a gross illegality is brought to the notice of this court, this court cannot discard the said contention merely on technical grounds. Therefore, I am of the view that the challenge raised by the appellant as to the maintainability of the appeal on the grounds of lack of challenge of the original award, is not legally sustainable.

In the light of the aforesaid observations and findings, this appeal is allowed, the award dated 18.07.2013 in OP(MV)No.211/2000 passed by the Motor Accidents Claims Tribunal, Alappuzha is hereby modified by granting an additional compensation of Rs.8,54,000/- (Rupees eight lakhs fifty four thousand only). The third respondent is directed to deposit the said amount along with interest @ as ordered by the Tribunal

and proportionate costs, within a period of three months from the date of receipt of a copy of this judgment. However, it is clarified that, as the delay of 52 days in filing the appeal is condoned by this court on the condition that, the appellant shall not be entitled to interest for the period, the third respondent shall be at liberty to exclude the said period, while computing the interest for the additional compensation.

sd/-

ZIYAD RAHMAN, A.A, JUDGE

scs/R.AV