

## IN THE HIGH COURT OF KERALA AT ERNAKULAM

## PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

WEDNESDAY, THE 8<sup>TH</sup> DAY OF SEPTEMBER 2021 / 17TH BHADRA, 1943MACA NO. 1173 OF 2014AGAINST THE AWARD DATED 18.08.2012 IN OP(MV) 277/2010 OF THE  
MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA, WAYANADAPPELLANT/PETITIONER:

PRASANTH  
AGED 21 YEARS, S/O. SIVADASAN,  
PEECHANAD HOUSE, YUNUS QUARTERS,  
EMILY, KALPETTA.P.O., VYTHIRI TALUK.  
BY ADV SMT.CELINE JOSEPH

RESPONDENTS/RESPONDENTS:

- 1 SHIBI MATHEW  
AGED 42 YEARS, S/O. MATHAI,  
PANTHANACKAL HOUSE, KABANIGIRI POST,  
PULPALLY, WAYANAD DISTRICT 686 001. \*(DELETED)
- 2 SUNIL KUMAR.K.R.,  
AGE AND FATHER'S NAME NOT KNOWN,  
KOTTARATHIL HOSUE, SEETHAMOUND,  
PULPALLY, WAYANAD DISTRICT 686 001. \*(DELETED)  
\*RESPONDENTS 1 & 2 ARE DELETED FROM THE PARTY ARRAY  
AT THE RISK OF THE APPELLANT AS PER ORDER DATED  
03.12.2019 IN I.A.NO.1/19 IN MACA 1173/14.
- 3 THE BRANCH MANAGER  
UNITED INDIA INSURANCE COMPANY LTD.,  
NOORNAL BUILDING, MYSORE ROAD,  
SULTHAN BATHERY 686 001.  
BY ADV SRI.P.K.MANOJKUMAR, SC FOR R3  
SMT.ALICE THOMAS, FOR R3

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 25.08.2021, THE COURT ON 08.09.2021 DELIVERED  
THE FOLLOWING:

**T.R.RAVI, J.**

**M.A.C.A.No.1173 of 2014**

Dated this the 8<sup>th</sup> day of September, 2021

**J U D G M E N T**

The appellant sustained injuries in a road traffic accident on 04.05.2010. When the appellant was walking along side of the road with his friend, he was hit by a Maruti Omni van driven by the 1<sup>st</sup> respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal, Kalpetta. The Tribunal awarded a compensation of Rs.92,940/- with interest at the rate of 7.5% per annum from the date of the claim till the date of realisation. Aggrieved by the quantum of compensation, the claimant has filed this appeal.

2. Heard Smt.Celine Joseph, learned counsel for the appellant and Smt.Alice Thomas, learned counsel for the 3<sup>rd</sup> respondent insurer.

3. The main contention of the appellant is that at the time of the accident, he was working as a construction worker in a Smokeless Oven Manufacturing industry. According to him, he was earning Rs.7,000/- as income. The Tribunal granted only Rs.3,000/- as notional income. Relying on **Ramachandrappa v.**

**Manager, Royal Sundaram Alliance Insurance Co.Ltd.,** reported in [**AIR 2011 SC 2951**], it is contended that he is entitled to Rs.7,000/- as notional income. Another contention is that the appellant is suffering from attack of epilepsy quite often after the accident and that he is entitled to amounts towards future treatment. Since he was only 18 years at the time of accident, it is also submitted that he is entitled to compensation towards loss of future prospects.

4. The appeal was filed with a delay of 338 days and on 03.12.2013 this Court had condoned the delay in filing the appeal on condition that the appellant will not be entitled to interest for any amount which is found to be payable to him towards enhanced compensation for the said 338 days.

5. The learned counsel for the insurer submitted that there is no oral evidence available in the case either regarding future treatment or regarding future prospects. It is submitted that the disability even according to the Medical Board was only 8% as can be seen from Ext.C1 and Ext.C1 does not say anything about any functional disability. The counsel however fairly submitted that since the accident was of the year 2010, going by **Ramachandrappa** (supra), the claim for Rs.7,000/- as monthly

income is justified.

6. Having considered the contentions of the appellant and the respondent, I am satisfied that the appellant is entitled to have the notional income fixed at Rs.7,000/- per month. Thus on re-fixing the notional income, the appellant will be entitled to a sum of Rs.21,000/- (7000x3) under the head "loss of earning". Under the head "compensation for permanent disability", the appellant will be entitled to a sum of Rs.1,20,960/- (7000x12x18x8/100). After deducting the amount already awarded by the Tribunal, the appellant will be entitled to get an additional compensation of **Rs.12,000/-** (21000-9000) under the head loss of earning and **Rs.69,120/-** (1,20,960-51,840) towards permanent disability. It would appear from Ext.A5 wound certificate that the appellant had history of epilepsy. There is nothing in evidence to show that the appellant is suffering from epileptic attacks owing to the accident. Further the injuries as can be seen from Exts.A5, A6, A8 and C1 are injuries at the nose and the lips and are not injuries that would affect future prospects. I hence find that the appellant is not entitled to compensation towards future treatment or loss of future prospects.

7. In the result, the appeal is allowed. The compensation

granted by the Tribunal is enhanced by a further sum of **Rs.81,120/- (Rupees Eighty One Thousand One Hundred and Twenty only)** with interest at 9% per annum on the enhanced compensation from 13.07.2010 till the date of realisation, with proportionate costs. However, the appellant will not be entitled to get interest for the enhanced amount for the period of delay of 338 days in filing the appeal, which was condoned as per order dated 03.12.2019 in C.M.Application No.1396/2014. The 3<sup>rd</sup> respondent insurer shall deposit the additional compensation granted in this appeal along with the interest and proportionate costs, before the Tribunal within two months from the date of receipt of a certified copy of this judgment, after deducting any amount to which the appellant is liable towards balance court fee and legal benefit fund. The disbursement of the compensation to the appellant shall be in accordance with law.

Sd/-  
**T.R.RAVI**  
**JUDGE**

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