



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 29TH DAY OF NOVEMBER 2024 / 8TH AGRAHAYANA, 1946

MACA NO. 1686 OF 2021

AGAINST THE AWARD DATED 3.11.2020 IN O.P.(M.V.) NO.11 OF
2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THIRUVANANTHAPURAM

APPELLANT/PETITIONER :

ARUN B.
AGED 41 YEARS
S/O.BABY, PUTHUVAL PUTHENVEEDU,
T.C.2/1011(1), PUTHUPALLI LANE, NEAR IHRD,
MEDICAL COLLEGE P.O., TRIVANDRUM DISTRICT, PIN -

BY ADVS.
PALlichal S.ASWAKUMAR
RINU. S. ASWAN

RESPONDENT/3RD RESPONDENT :

NATIONAL INSURANCE COMPANY LTD.
REP. BY DIVISIONAL MANAGER,
ST.JOSEPH'S PRESS BUILDING, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN - 695 001.

BY ADV P.M.M.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



EASWARAN S. , J.

M.A.C.A No.1686 of 2021

Dated this the 29th day of November, 2024

JUDGMENT

The claimant in O.P.(M.V.) No.11 of 2015 on the files of the Motor Accidents Claims Tribunal, Thiruvananthapuram is the appellant. On 8.11.2014 at 5.45 p.m., while the claimant was riding a motorcycle bearing registration No. KL-01-AV-2657 from Pattom to Medical College and when he reached near the mosque at Medical College, another motorbike bearing registration No.KL-26-E-4175 driven in a rash and negligent manner hit the rear portion of his motorcycle causing the vehicle move forward and hit against a car bearing registration No. KL-01-TC-27/94 which came from the opposite direction. Due to the impact of the accident, the claimant fell down and sustained injuries. Claiming compensation in respect of the above accident, the claimant approached the Motor Accidents Claims Tribunal, Thiruvananthapuram. The claimant contended that he is a Higher Secondary School Teacher, Government High School, Poovathoor and was earning an amount of Rs.41,170/- per month and was aged 37 years at the time of accident. In support of his contention, the claimant produced Exts.A1 to A16 documents before the tribunal. The claimant was examined as PW1. No oral



or documentary evidence was adduced on the side of the respondent. Ext.A12 is the disability certificate which shows that the claimant suffered 10% permanent disability. However, the tribunal fixed the functional disability at 6% and took the notional income at Rs.10,000/- for the purpose of calculating compensation towards permanent disability. Aggrieved by the aforesaid award, the claimant approached this Court with present appeal.

2. Heard Sri. Rinu S. Aswan, the learned counsel appearing for the appellant and Sri. P.M.M. Najeebkhan, the learned counsel appearing for the insurance company.

3. The learned counsel appearing for the appellant submitted that in the light of the nature of the disability suffered by the claimant, the tribunal could not have fixed the percentage of disability at 6%. In support of his contention, he relied on the judgment of this Court in **Manikantan G. v. K. Janardhanan Nair and Others** [2021 (5) KHC 305]. He further submitted that the tribunal erred in not granting the just and fair compensation towards the permanent disability and erroneously held that since the claimant was working as Higher Secondary School Teacher, Government High School, Poovathoor, there is no loss of earning. In support of his contention, he relied on the judgment of this Court in **Akhilesh Chandran vs. Sabu Varghese & Others** [2024 KLT Online 2499].



4. On the other hand, the learned counsel appearing for the insurance company submitted that the notional income fixed by the tribunal does not call for any interference by this Court. In so far as the permanent disability is concerned, the learned counsel submitted that, going by the judgment of the Hon'ble Supreme Court in **Raj Kumar, Vs Ajaykumar [2011 (1) SCC 343]**, the tribunal has got the power to fix the disability in accordance with the facts of the particular case. In support of his contention that the notional income fixed by the tribunal was just and proper, he relied on the judgment of the learned Single Bench in **Raju Sebastian V. United India Insurance Co. Ltd. [2021 (5) KHC 662]**.

5. I have considered the rival submissions raised across the Bar.

6. The primary question which this Court is called upon to decide is what should be the notional income of the claimant while calculating the permanent disability. It is now settled law that even if the claimant is employed either as a Government servant or on a regular basis, still he is entitled to claim compensation towards permanent disability for the injury caused in the accident. This Court in **Akhilesh Chandran** (Supra), has held that in such cases, the tribunal ought to have fixed the income in tune with the monthly salary which was drawn by the claimant. In the present case, an amount of Rs.41,170/- was drawn by the claimant as his monthly



income. Taking half of the aforesaid amount as taken by this Court in **Akhilesh Chandran** (Supra) the amount would come to Rs.20,585/- which is fixed as the income for the purpose of calculating permanent disability. In so far as the scaling down of the percentage of disability is concerned, the aforesaid question is no longer res integra in the light of the judgment of the learned Single Judge of this Court in **Manikantan G. (Supra)**. Therefore, this Court is of the considered view that claimant is entitled to have the percentage of disability noted in Ext.A12 be restored for the purpose of calculating the compensation towards permanent disability. In the result, the appeal stands allowed and the claimant is entitled to get enhanced compensation as follows:

Heads of claim	Amount awarded by this Court	Amount awarded by the tribunal	Enhanced compensation
Compensation for permanent disability	2,22,318 (20585x12x9x10/100)	64800	157518
Loss of amenities	74,106 (1/3rd of permanent disability)	32,400	41706
Compensation for pain and sufferings	50000	40,000	10,000
Compensation for future treatment (removal of implants)	25000	-	25,000
Total enhanced compensation			2,34,224



7. Accordingly, the appeal is allowed. The appellant is entitled to get an enhanced compensation of Rs.2,34,224/- (Rupees Two Lakhs Thirty Four Thousand Two Hundred and Twenty Four only) with 8% interest per annum from the date of petition till realization with proportionate cost. The respondent shall deposit the amount within a period of one month from the date of receipt of a copy of this judgment. The appellant is not entitled to get interest for Rs.25,000/-, the amount awarded towards Compensation for future treatment.

sd/-

EASWARAN S.
JUDGE

NS