

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MRS. JUSTICE K. HEMA**

**WEDNESDAY, THE 15TH FEBRUARY 2006 / 26TH MAGHA, 1927**

**MACA. No. 327 of 2003**

**OP (MV). 532/1993 dated 30.04.2002 of MOTOR ACCIDENTS CLAIMS  
TRIBUNAL, MAVELIKKARA**

**APPELLANT: 3RD RESPONDENT IN THE O.P (MV)**

**NATIONAL INSURANCE COMPANY LTD.,  
KAYAMKULAM, REPRESENTED BY ITS DEPUTY MANAGER,  
MOTOR THIRD PARTY CLAIMS SECTION, AJAY VIHAR,  
M.G.ROAD, ERNAKULAM.**

**BY ADV. SRI. LAL GEORGE**

**RESPONDENTS: PETITIONER & RESPONDENTS 1 & 2 IN THE OP(MV)**

- 1. KANAKAMMA,  
PADIKKADATHU, PALLANA P.O., PALLANA.**
- 2. R. SANTHOSH, S/O. RAJAPPAN,  
RAJA BHAVAN, ARATTUPUZHA.**
- 3. A.K. VIJAYAN,  
ARIYANNOOR HOUSE, BUDHANOOR P.O.,  
CHENGANNUR.**

**R1 BY ADV. SRI. K. SASIKUMAR**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY  
HEARD ON 15/02/2006, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**MACA. No. 327/2003**

**Order on I.A. No. 1158/2003 in MACA. 327/2003**

**Dismissed.**

**15.02.2006**

**sd/-**

**K. HEMA, JUDGE.**

**// TRUE COPY//**

**P.A. to Judge.**

**vgs**

**K.HEMA, J.**

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**M.A.C.A.NO.327 OF 2003**  
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**Dated this the 15<sup>th</sup> day of February, 2006**

**JUDGMENT**

Insurance Company is the appellant herein, who was the third respondent in M.V.(O.P).No.532 of 1993 of the M.A.C.T., Mavelikkara. The first respondent herein filed the said petition claiming compensation of Rs.75,000/- in total under Section 166 of the Motor Vehicles Act, 1988 ('the Act', for short). According to the claimant, she sustained injury in a motor accident and also suffered permanent partial disability at 12%. An award was passed for Rs.48,900/- with 9% interest from the date of petition for realisation with cost. It was found that the appellant was liable to pay compensation, as the insurer.

2. Learned counsel for the petitioner submitted that the Tribunal ought not to have granted any amount towards compensation for disability as claimed by the appellant. At the time of hearing, it is made clear by learned counsel for appellant that the challenge is only with respect to the amount which was ordered as compensation for disability allegedly suffered by first respondent-claimant. The Tribunal assessed Rs.21,000/- as the amount payable as compensation on that count. This was mainly based on the medical records and more particularly, the evidence of PW2 and Exhibit A12. Exhibit A12 and the evidence of PW2 would go to show that the claimant suffered 12% permanent disability due to intra-vertebral disc prolapse ('IVDP', for short).

3. Learned counsel for the appellant strenuously argued that there is absolutely no evidence to indicate that the 'IVDP', allegedly suffered by the claimant was caused as a result of the accident. Unless there is evidence to connect such disability with the accident, the Insurance Company is not liable to pay any compensation, it is submitted. Learned counsel for appellant has drawn my attention to the first medical record issued in this case, namely, the wound certificate which is marked as Exhibit A6, and pointed out that 'IVDP' was not noted by the doctor at the time of examination of the claimant on 3.3.1993.

4. On going through Exhibit A6, it can be seen that in the details of injury, no mention is made with respect to 'IVDP'. It was also submitted that subsequent medical records such as Exhibits A9 and A9(b), treatment certificates issued from the District Ayurveda Hospital, also will not show that claimant had at any time suffered 'IVDP', consequent to the accident. It is further argued that it is only in Exhibit P2 that for the first time, the doctor has reported that the injured had 'IVDP' which resulted in permanent disability. Therefore, it was contended that 'IVDP' developed only at a belated stage, which has no connection with the accident.

5. Learned counsel for first respondent-claimant submitted that all medical records in this case would show that claimant sustained injury to the back. This was noticed by the doctor as early as on the date of accident itself. Exhibit A6 is the earliest document relating to the injury sustained by the injured in the accident and it was issued on 3.3.1993, ie. the date of accident itself. On the allegation that there was a motor accident involving

an autorickshaw, the claimant was examined by the doctor with the following injuries:

- “(1) Soft swelling (Haematoma) 3 cm x 2 cm size on the middle of shin-left leg.
- (2) Traumatic myalgia of back of abdomen-tenderness on the low back.”

6. In Exhibit A6, it is mentioned that the patient had traumatic myalgia of back of abdomen – tenderness on the low back. PW1 also stated that she had severe pain in the back after the accident. In Exhibit A6, in column 17, regarding the condition on discharge, the doctor recorded, “as the low back ache persists, the patient was referred to Orthopedic Department, Medical College Hospital, Alappuzha”. From Exhibit A6 itself, it can be seen that consequent to the injury sustained in the accident, the claimant had suffered low back ache which persisted even at the time of discharge, after a treatment for about 7 days in the Government Hospital. The date of admission is 3.3.1993 and the date of discharge is 11.3.1993.

7. Subsequently, she was examined from 12.3.1993 onwards for contusion low back etc. at the Medical College Hospital, as revealed from Exhibit A9(a) certificate issued by the Assistant Professor of Orthopedic to whom she was referred to from the Government Hospital, Thrikkunnappuzha. In Exhibit A9(a), it is certified that she was continuing treatment as outpatient for the injuries including the 'contusion low back' which have been sustained in a road traffic accident on 3.3.1993. Exhibits A9 and A9(b) would show that the patient was under treatment from the Ayurveda Hospital also. These documents are dated 7.1.1994 and 21.9.1999.

8. The evidence of PW2 also reveals that the claimant was under treatment of the Orthopedic Surgeon, Medical College Hospital, Alappuzha for a considerable time consequent to the injury sustained in the motor accident. PW2 deposed that while working as Lecturer, Orthopedic in Medical College Hospital, Alappuzha, he had seen the claimant on 7.10.1995 with 'complaint of low back ache with history of RTA in 1993'. She was examined clinically and radiologically. She had radiating pain in the left leg and clinical diagnosis of 'IVDP'. She was also advised to take rest. PW2 also stated that on 13.4.1996 he examined and issued disability certificate, Exhibit A12. He opined that the claimant has 12% disability and she will have difficulty in doing ordinary work as a house wife and manual labour is not advisable. She was under the treatment of this doctor till 12.8.1998, i.e., for a period of three long years. Even on that date, she had complaints of pain and numbness on the left leg due to 'IVDP'. The doctor also stated in cross-examination that he examined the claimant on 7.10.1995 and that she had an injury in the low back due to road traffic accident.

9. Though PW2 was cross-examined, nothing is brought out to discredit his version. The evidence of PW2 stands undiscredited. While considering the other medical records along with the evidence of PW2 and Exhibit A12, the present complaint of 'IVDP' can be traced back to the 'low back ache', which the claimant had suffered, on the date of accident itself. The doctor also deposed that the problem was as a result of the injury sustained in a road traffic accident. It is also clear from Exhibit A12 that the doctor referred to the outpatient ticket issued to the claimant on 12.3.1993

and also another certificate issued by Dr.C.M. Kumaran dated 19.4.1993 and the follow up O.P.card No.118368 dated 7.10.1995. It is clear from these facts that the patient was continuously under the treatment and she had developed 'IVDP' which was identified by PW2 as on 13.4.1996, as revealed from Exhibit A12 certificate.

10. In the light of the overwhelming medical evidence which stands undiscredited, it is clear that the claimant suffered 'IVDP' due to road traffic accident and the contention raised by the appellant that the problem was a subsequent development unconnected with accident, cannot be accepted. There is nothing on evidence to suggest that 'IVDP' developed due to any other reason. The patient was only aged 37 years at the time of accident. In the above circumstances, the Tribunal rightly relied upon the medical evidence and other materials to conclude that first respondent sustained 12% disability as deposed by PW2.

In the above circumstances, the amount ordered as compensation on the basis of loss of earning power, multiplier etc. cannot be said to be illegal or improbable. The appeal has to fail. This appeal is dismissed.

**K.HEMA, JUDGE**

**vgs.**

**K.HEMA, J.**

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**M.A.C.A.NO.327 OF 2003**  
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**J U D G M E N T**

**15.02.2006**