

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

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**

**&**

**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929**

**MFA.No. 510 of 2002(A)**

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**OPMV.252/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA**

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**APPELLANT/APPELLANT/3RD RESPONDENT:**

**THE ORIENTAL INSURANCE CO.LTD.,  
PUNALAU, REP. BY ITS ASST.MANAGER,  
REGIONAL OFFICE, ERNAKULAM NORTH,  
KOCHI-18.**

**BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)**

**RESPONDENTS/RESPONDENT/CLAIMANT:**

**1. SAKARIA @ BABY, S/O. GEORGE,  
PUSHPANIVASIL HOUSE, THENGUMKAVU P.O.,  
PREMADOM VILLAGE, PATHANAMTHITTA DIST.**

**2. RASHEED M.A., S/O. AHAMMED RAWTHER,  
MOLEVEETIL, MANGARAM P.O., KONNI, DO.**

**3. V.N. BAYEE, KALLUVILA ESTATE,  
MURINJAKAL P.O., KODAL, DO.(DELETED)**

**Deleted as per order dt. 13.10.03 on IA 2031/03**

**BY ADV. SRI.T.K.KOSHY  
SRI.P.P.SUDHEER  
SRI.R.PREM SANKAR**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD  
ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**ORDER ON C.M.P.NO.3039/2002 IN MFA 510/2002**

**DISMISSED**

**31.7.2007**

**SD/-J.B.KOSHY, JUDGE**

**SD-K.P.BALACHANDRAN, JUDGE**

**/TRUE COPY/**

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No. 510 of 2002  
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**JUDGMENT**

Koshy, J.

This appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal. The claimant, at the age of 63 years, met with a motor accident due to the negligence of the driver of the vehicle insured by the appellant Insurance Company. Initially he claimed Rs.1,50,000/- as compensation. Later, it was enhanced to Rs.7,30,000/-, limiting it to Rupees five lakhs, mainly due to the subsequent treatments he had. In the original application he stated that he was an Agriculturist. But, later he stated that he was also working as an Overseer. The Tribunal has taken Rs.3,000/- as the monthly income. The accident occurred on 7.7.1997. Exhibit A5 certificate was produced to show his monthly income. It was not relied on by the Tribunal also.

However, considering the fact that he was an agriculturist and in the absence of any counter evidence, we are not inclined to change the monthly income of Rs.3,000/- assessed by the Tribunal. He was aged 63 at the time of the accident. As per the second schedule the multiplier is only 5.

2. The certificate issued by Dr.James Zachariah shows that the first respondent was admitted in Raphah Hospital, Visakhapatnam on 13<sup>th</sup> November, 2000 with non healing of Ulcer over left lower tibia. The certificate reads as follows:

"Mr.Zachariah presented to us on 1<sup>st</sup> Nov. 2000 with a non-healing ulcer of 1" x 1.25" Lt. lower leg with exposed infected bone. He was not a known diabetic or hypertensive. He gave an alleged history of RTA 3 years ago and having sustained fracture of Tibia and Fibula. he has undergone three operations before presenting to me.

On 2<sup>nd</sup> Nov. 2000 as an initial procedure he underwent Bone curettage and debridement of unhealthy granulation tissue under General Anesthesia.

He was admitted on 13<sup>th</sup> Nov 2000 for flap skin cover.

HIS BASE LINE INVESTIGATIONS WERE NORMAL.

On the 14<sup>th</sup> November under Spinal Anesthesia he underwent chipping and shaping of tibial bone prominence and rotation advancement of lateral skin to cover the defect.

Post operatively he had uneventful recovery. But dressings continued alternate day with splinting and elastocrepe bandage.

He was discharged on the 25<sup>th</sup> Nov 2000 in satisfactory condition."

We have referred the patient to the Medical Board for assessing the permanent disability. The

medical board certified total disability as 9%. If 9% is taken as the disability, compensation payable will be  $3000 \times 12 \times 9/100 \times 5 = 16,200$ , instead of Rs.36,000/- awarded by the Tribunal. For loss of earning for two years at the rate of Rs.3,000/- per month, Rs.72,000/- was awarded. It is true that he was initially treated in Muthoot Hospital, Kozhencheery from 7.7.1997 to 9.8.1997, thereafter from 17.9.1997 to 20.9.1997 and from 12.1.1998 to 16.1.1998. Thus, for about 4½ months he was in the Muthoot Hospital. Subsequently, he development problems and he was consulted in Pushpagiri Hospital, Thiruvalla and then he went to Visakhapatanam in 2000. His major injury was fracture of tibia and fibula. Considering the discharge certificate, at the maximum, we can grant for actual loss of earning for ten months, Rs.30,000/- can be awarded, instead of Rs.72,000/- awarded by the Tribunal. For loss of amenities in life the Tribunal has granted Rs.75,000/-. The

first respondent has suffered only 9% disability. He was granted compensation for permanent disability. For loss of amenities we award Rs.15,000/- instead of Rs.75,000/- awarded by the Tribunal. For pain and suffering Rs.60,000/- was awarded. It is true that at the age of 63 he had to undergo three operations and prolonged treatment. Exhibit A4 certificate shows that he was under treatment in November 2000, even though the accident occurred in 1997. We are of the opinion that Rs.30,000/- can be granted instead of Rs.60,000/- awarded by the Tribunal for pain and suffering. For by-standers expenses we award Rs.6,000/- instead of Rs.1,200/- awarded by the Tribunal, mistakenly that only Rs.1,000/- was claimed. He was taken to many hospitals and finally to Visakhapatnam. It was argued that Rs.80,000/- was awarded on the basis of actual medical bills, against a claim of Rs.97,000/- and he is even now under treatment and if actual

medical expenses are deducted, the balance amount of compensation is very meagre. We have calculated reasonable amount of compensation. Thus, the total amount of compensation the appellant is entitled to is only Rs.2,20,000/- instead of Rs.3,50,200/- awarded by the Tribunal. We are not altering the rate of interest and cost awarded by the Tribunal. The appellant Insurance Company need deposit only the balance amount, after deducting the amount already paid. Since the claimant is a senior citizen, on deposit of the amount, he is allowed to withdraw the same.

The appeal is allowed in part.

(J.B.Koshy, Judge)

31<sup>st</sup> July, 2007

(K.P.Balachandran, Judge)

tkv



J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No.510 of 2002

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**JUDGMENT**

31<sup>st</sup> July, 2007