

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

MACA.No. 2226 of 2010 ( )  
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AGAINST THE AWARD IN OPMV 1050/2007 of MACT VADAKARA DATED  
29-04-2010

APPELLANT/3RD RESPONDENT:  
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NATIONAL INSURANCE CO.LTD.  
REGD.OFFICE, 3, MIDDLETOWN STREET  
POST BOX NO.9229  
KOKATTA 700071 REPRESENTED BY THE MANAGER  
REGIONAL OFFICE, KOCHI.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENT/CLAIMANT:  
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VISHAL, S/O VIJAYAN, 20 YEARS  
SARAYU NIVAS, NARIPPATTA POST, VETAKARA  
KOZHIKODE DISTRICT.PIN 673 506

R1 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 30-06-2015 ALONG WITH M.A.C.A.NO.2233/2010, THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &  
K.P.JYOTHINDRANATH, JJ.**

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**M.A.C.A.Nos.2226 & 2233 of 2010**  
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Dated this the 30<sup>th</sup> day of June, 2015

**JUDGMENT**

Ramachandran Nair, J.

Both these appeals arise from the award in O.P.(MV) No.1050/2007 on the file of the Motor Accidents Claims Tribunal, Vatakara. In M.A.C.A.No.2233/2010, the claimant is the appellant and M.A.C.A.No.2226/2010, the Insurance Company is the appellant.

2. As far as these appeals are concerned, we are only called upon to decide the quantum of compensation. A narration of the events leading to the filing of the application by the appellant in M.A.C.A.No.2233/2010 is required. The appellant/claimant was travelling in a motor cycle bearing Reg.No.KL-07 AV 2388 as a pillion rider on the date of the accident namely 23.03.2007. The accident occurred at 9 p.m.. When he reached near Kadina Theatre, the motor cycle was hit by a lorry bearing Reg.No.TN-55/4565 driven by the second respondent.

3. Both the appellant and the rider of the motor cycle sustained serious injuries. He was immediately taken to Rex Ortho Hospital, Coimbatore. After the treatments undertaken in that hospital, he was treated in MIMS Hospital, Calicut. The appellant was examined as PW1 and documents have been marked as Exts.A1 to A19 and Ext.C1 is the disability certificate. The Insurance Company has produced Ext.B1 policy.

4. The appellant was a student of 6<sup>th</sup> semester Aeronautic Engineering in the Nehru College of Aeronautics and Applied Sciences, Coimbatore. In paragraph 9 of the award, the injuries sustained by the appellant have been shown which we reproduce herein below:

“Tenderness and swelling over the (R ) thigh ( R ) hand and left leg, deformity + open wound in the ( L) leg and ( R) hand, abrasion on the left forearm - ROM painful. X-ray revealed fracture of shaft of femur ( R), fracture of both bones ( L) leg, fracture 2<sup>nd</sup> M.C. ( R), fracture undisplaced radius.”

5. He was treated in the Ortho hospital for the period from 23.03.2007 to 7.4.2007, 7.5.2007 to 13.05.2007, 12.11.2007 to

26.11.2007, 30.08.2007 to 3.9.2007, 15.6.2007 to 10.07.2007. Initially he was treated with inter locking nailing for # shaft of femur ( R), LRS application for both bones # left leg, closed reduction and K wire fixation for 2<sup>nd</sup> M.C. # ( R) on 23.3.2007 and external fixator was removed and IM nailing for left tibia with flap coverage was done on 26.3.2007 . Appellant was again admitted in the hospital on 7.5.2007 and discharged on 13.05.2007 and the diagnosis was 'post operative inter locking tibia left' and the procedure done was 'debridement implant exit and LRS application. He was again admitted on 13.11.2007 and was discharged on 26.11.2007 and the diagnosis shows that there was delayed union left tibia with LRS and the procedure adapted was “ bone grafting loose schenz pin removal and change of new schenz”. Even as on 3.9.2007, again procedures namely schanz screw change was done. In the MIMS hospital he was admitted because of delayed union fracture tibia left with LRS Insitu. He underwent cancellous bone graft of left tibia harvested from left iliac crest under general anesthesia.

6. The appellant produced various documents showing the

medical treatment and the expenses including medical bills- Ext.A7 series. Ext.A12 onwards are the documents to show the academic qualifications. Ext.A13 is the copy of the mark card of the appellant in Plus Two examination. Ext.A14 is the transfer certificate issued from Nehru College of Aeronautics and Applied Sciences, Coimbatore. Ext.A15 series are the semester exam mark card for B.Tech examination. Ext.A16 is the course completion certificate which shows that he has completed the course in August, 2008. The Tribunal has granted a total compensation of Rs.3,26,870/- against a total claim of Rs.10 lakhs.

7. The learned counsel for the appellant/claimant submitted that he had very good prospects in Aeronautic Engineering and the appellant would have been placed in a very good position after getting suitable employment. Now there is permanent disability of 5% which has affected his career prospects. It is submitted that the compensation granted under different heads is inadequate. It is also submitted that the Tribunal did not fully appreciate the loss of opportunities for the appellant and he had to be adequately compensated on that account.

8. The learned counsel for the Insurance Company submits that an amount of Rs. 1,00,000/- has been granted by the Tribunal as loss of future expectation in career as Aeronautic Engineer which is only speculative. There is no evidence to show that he had lost any opportunity.

9. The learned counsel for the appellant relied upon the decision of the Apex Court in **Arvind Kumar Mishra v. New India Assurance Company Limited and another [(2010) 10 SCC 254]**, wherein in the case of a final engineering student who suffered an accident on 23.6.1993, the Apex Court took Rs.60,000/- as the salary and allowances which is equal to the salary of an Assistant Engineer in Government sector. Herein of course the appellant could not produce any evidence to show any offer for employment. Even then, being a qualified professional who had obtained a degree in Aeronautic Engineering, we will have to reckon the fact that he would have been placed in a very good job. Due to the accident, he had lost two semesters of studies also. The certificate- Ext.A14 shows that he completed the course only in August 2008. After considering the

various aspects and in the light of the fact that he has suffered disability for the whole life, according to us, the compensation granted requires modification. Rs. 1,00,000/- granted towards loss of future expectation in career as Aeronautic Engineer will have to be deleted also.

10. The appellant was inpatient for a period of 65 days and various treatment procedures including surgeries have been done. The injuries were very serious also. Therefore, for pain and suffering, for bystander's expenses and for extra nourishment he will be entitled for due enhancement. As he has to suffer the disability for the whole life, he will be entitled for a reasonable amount for loss of amenities and loss of enjoyment in life also. For the quantification of amount, the Tribunal has obviously taken ₹5,000/- as the monthly income. According to us, the same will be at a much lower estimate in view of the potential of the appellant as an Engineering Graduate. Even going by the decision in **Arvind Kumar Mishra's** case ( supra), the Apex Court has taken ₹5,000/- as monthly income ( ₹60,000/- per year ) in an accident which occurred in the year 1993. Considering the fact that

he had very good prospects and he would have obtained a very good job during 2007-2008, we will fix a notional monthly income of ₹ 10,000/- in tune with the principles laid down by the Apex Court in the decision referred above. At the time of the accident, he was in the 6<sup>th</sup> semester and had to complete two more semesters. It is clear that because of the accident and the treatment, his completion of course stood delayed. The studies have been partially affected also. Therefore, he will be entitled for a reasonable compensation for the loss of studies and the further time taken for completing the course.

111. Accordingly, the compensation is refixed in the following manner :

<i><b>Head of claim</b></i>	<i><b>Amount Awarded in rupees</b></i>
Pain and suffering	80000
Transportation expenses	28600
Bystander's expenses	19500 ( 65 x 300)
Medical and miscellaneous expenses	74020
Loss of amenities and convenience etc.	35000
Extra nourishment	6500



<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Compensation for permanent disability	108000 ( 10000 x 12 x 18 x 5%)
Loss of studies and for delayed completion of course	50000
Total	401620 Rounded off to Rs.401600/- ( Rupees four lakhs one thousand six hundred only)

12. The amount of compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount with interest within three months and we permit the appellant/claimant to withdraw the amount also.

The appeals are accordingly disposed of. The parties will bear their costs in the appeals.

**T.R.RAMACHANDRAN NAIR, JUDGE**

**K.P.JYOTHINDRANATH,JUDGE**

SV.