

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941

MACA.No.4353 OF 2019(D)

AGAINST THE AWARD IN OP(MV)NO.938/2011 DATED 19-10-2017 OF MOTOR  
ACCIDENT CLAIMS TRIBUNAL, THIRUVANANTHAPURAM

APPELLANT/PETITIONER:

JALAJA  
AGED 54 YEARS  
W/O.REMANNAN, SHELTER, MELETHOPPU, PERUKAVU.P.O.,  
THIRUVANANTHAPURAM.

BY ADV. SRI.C.S.SUMESH

RESPONDENTS/RESPONDENTS:

- 1 NASAR,  
PLAVILAKAM PURAYIDOM, TC.10/1048, KUNJALUMOODU,  
KARAMANA.P.O., THIRUVANANTHAPURAM-695002.
- 2 SHERIF.A.,  
MUTTAM PARAMBATH PANAYIL VEEDU,  
SREEKARYAM.P.O., THIRUVANANTHAPURAM-695017.
- 3 THE DIVISIONAL MANAGER,  
ICICI LOMBARD GENERAL INSURANCE CO.LTD., KANNANKARI  
ESTATE, 3RD FLOOR, MARINE DRIVE, SHANMUGHOM ROAD,  
COCHIN-682031.

SRI R.AJITH KUMAR- STANDING COUNSEL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION  
ON 31.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The appellant is the claimant in O.P(MV)No.938 of 2011 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram, a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the injuries sustained by her in a motor accident, which occurred on 04.07.2011, while she was riding a scooter bearing registration No.KL-01/AE-7547. At the place of accident, the scooter was hit by a goods autorickshaw bearing registration No.01/AZ-6367 owned by the 1<sup>st</sup> respondent, driven by the 2<sup>nd</sup> respondent and insured with the 3<sup>rd</sup> respondent. In the accident, she sustained injuries. Alleging that the accident occurred due to the rash and negligent driving of autorickshaw by the 2<sup>nd</sup> respondent, claim petition was filed before the Tribunal claiming a total compensation of Rs.4,60,000/- under various heads, which was limited to Rs.4,00,000/- for the purpose of payment of Court Fee.

2. Before the Tribunal, the 1<sup>st</sup> respondent owner and the 2<sup>nd</sup> respondent driver remained absent and they were set ex parte.

3. The 3<sup>rd</sup> respondent insurer filed written statement admitting insurance coverage of the autorickshaw involved in the accident; however, denying negligence alleged against its driver. The insurer disputed the age, occupation, monthly income, nature of injuries, disabilities etc. stated in the claim petition. The insurer contended that the 2<sup>nd</sup> respondent driver had no valid driving licence and badge at the time of accident.

4. Before the Tribunal, Exts.A1 to A15 were marked on the side of the appellant/claimant. On the side of the respondents, the insurance policy of the offending vehicle was marked as Ext.B1.

5. After considering the pleadings and materials on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of autorickshaw by the 2<sup>nd</sup> respondent driver. Since insurance coverage of the said vehicle was not in dispute and the insurer failed to prove the alleged violation of the conditions of policy, the insurer was held liable to indemnify the insured. Under various heads, the Tribunal awarded a total

compensation of Rs.1,54,480/-, together with interest at the rate of 8% per annum from the date of petition till date of deposit, with proportionate cost, and the insurer was directed to satisfy the award.

6. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant is before this Court in this appeal.

7. Heard the learned counsel for the appellant/claimant and also the learned Standing Counsel for the 3<sup>rd</sup> respondent insurer.

8. The issue that arises for consideration in this appeal is as to whether the appellant is entitled for enhancement of the compensation awarded by the Tribunal under various heads.

9. In **State of Haryana v. Jasbir Kaur [(2003) 7 SCC 484]** the Apex Court held that the Tribunal under Section 168 of the Motor Vehicles Act, 1988 is required to make an award determining the amount of compensation which is to be in the real sense 'damages' which in turn appears to it to be 'just and reasonable'. It has to be borne

in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

10. In **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]** a Constitution Bench of the Apex Court held that, Section 168 of the Motor Vehicles Act, 1988 deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of

equitability.

11. In the instant case, the compensation awarded by the Tribunal under various heads reads thus;

Sl. No.	Head of Claim	Amount Claimed	Amount Awarded	Basis/vital details in a nutshell
1	Loss of earning for one month from 04-07-2011	17,000	17,000	Nominal amount
2	Transport to hospital	3,000	2,000	Nominal amount
3	Extra nourishment	5,000	3,000	Considering the nature and gravity of the injuries sustained and the duration of hospitalisation and treatment
4	Damage to clothing & personal articles	5,000	1,000	Reasonable on a rough estimate
5	Medical expenses	1,00,000	77,700	As per admissible medical bills produced
6	Future Medical Expenses	25,000	Nil	Disallowed
7	Expenses bi-stander	5,000	1,500	Considering the nature of the injuries sustained and duration of hospitalisation
8	Compensation for pain and sufferings	25,000	15,000	Considering the nature and gravity of the injuries sustained and the duration of hospitalisation and treatment
9	Compensation for the permanent disability	1,75,000	17,280	Rs.6000/- x12x3x8100
10	Compensation for loss of future earning	75,000	Nil	Disallowed

	power			
11	Compensation for the loss of amenities in life	25,000	20,000	Considering the nature and gravity of the injuries sustained on the personal life of the petitioner
12	Total (Claim is limited to Rs.4,00,000)	4,60,000/-	1,54,480/-	Rs.1,54,480/- with interest @ 8% per annum from 05/08/2011 till realisation

12. The accident occurred on 04.07.2011. At the time of accident, the appellant was aged 46 years. The appellant claimed a monthly income of Rs.17,500/- as a Typist in Forest Headquarters, Vazuhuthacaud. As per Ext.A15 pay particulars, the gross salary of the appellant for the month July 2011 was Rs.18,376/-. Therefore, the Tribunal took her monthly income as Rs.18,400/-. As per Ext.A14 leave certificate, the appellant availed 40 days commuted leave for the period from 04.07.2011 to 12.08.2011 and 9 days for the period from 19.08.2011 to 27.08.2011. Therefore, the Tribunal awarded a sum of Rs.17,000/- towards loss of earnings.

13. The document marked as Ext.A8 is the wound certificate; Ext.A9 is the treatment certificate; Ext.A10 is the

discharge summary; and Ext.A13 is the medical certificate. As per medical records, in the accident, the appellant sustained comminuted fracture distal radius left; abrasion right hand; abrasion right leg; and multiple abrasions and contusions. She had undergone inpatient treatment for a period of 3 days from 04.07.2011 to 07.07.2011. Ext.A11 series are the medical bills for a sum of Rs.77,697.28/-.

14. In Ext.A12 disability certificate issued by an individual doctor, the permanent disability of the appellant, on account of the injuries sustained in the accident, is assessed as 12%. The appellant has not chosen to prove Ext.A12 by examining the doctor concerned. Considering the nature of injuries sustained, the Tribunal took the percentage of permanent disability as 8% for the purpose of awarding compensation under various heads. The procedure adopted by the Tribunal in this regard warrants no interference in this appeal.

15. On account of the injuries sustained in the accident, the appellant had undergone inpatient treatment for 3 days. The accident is of the year 2011. Towards



transportation to hospital, the Tribunal awarded a sum of Rs.2,000/-. Considering the nature of injuries sustained and the treatment the appellant had undergone, as borne out from medical records, the compensation awarded by the Tribunal under this head represents just and reasonable compensation, which requires no enhancement in this appeal.

16. Towards bystander expenses, the Tribunal awarded a sum of Rs.1,500/-. Towards extra nourishment, the Tribunal awarded a further sum of Rs.3,000/-. The accident is of the year 2011 and the appellant had undergone inpatient treatment for 3 days. Considering the nature of injuries sustained and the treatment the appellant had undergone, as borne out from medical records, the compensation awarded by the Tribunal under these heads cannot be said to be on the lower side, which requires no enhancement in this appeal.

17. Towards damage to clothing and articles, the Tribunal awarded a sum of Rs.1,000/-. Considering the fact that the accident is of the year 2011, the compensation

under this head is re-fixed as Rs.1,250/-, resulting an additional compensation of **Rs.250/-** (1,250 – 1,000).

18. Towards medical expenses, the Tribunal awarded a sum of Rs.77,700/-, covered by Ext.A11 series of medical bills. In the absence of any further materials, the compensation awarded by the Tribunal under this head represents just and reasonable compensation, which requires no enhancement in this appeal.

19. The appellant claimed a sum of Rs.25,000/- towards future medical expenses. No reliable materials were placed before the Tribunal to prove the requirement of any further treatment, on account of the injuries sustained in the accident. No materials are placed on record to prove the expense incurred by the appellant towards future treatment. In the absence of any such materials, the appellant is not entitled for payment of any compensation under this head.

20. As compensation towards pain and suffering, the Tribunal awarded a sum of Rs.15,000/-. Considering the nature of injuries sustained and the treatment the appellant had undergone, as borne out from medical records, the

compensation awarded by the Tribunal under this head cannot be said to be on the lower side. Therefore, the appellant is not entitled for any enhancement under this head.

21. In **Sarla Verma v. Delhi Transport Corporation [(2009) 6 SCC 121]**, the Apex Court, after referring to its earlier decisions in **Kerala State Road Transport Corporation v. Susamma Thomas [(1994) 2 SCC 176]**, **U.P. State Road Transport Corporation v. Trilok Chandra [(1996) 4 SCC 362]** and **New India Assurance Co. Ltd. v. Charlie [(2005) 10 SCC 720]** held that the multiplier to be used should be as mentioned in column (4) of the Table in paragraph 40 of the said decision [prepared by applying **Susamma Thomas, Trilok Chandra** and **Charlie**], which starts with an operative multiplier of **18** [for the age groups of 15 to 20 and 21 to 25 years], reduced by one unit for every five years, i.e., multiplier of **17** for 26 to 30 years, multiplier of **16** for 31 to 35 years, multiplier of **15** for 36 to 40 years, multiplier of **14** for 41 to 45 years, and multiplier of **13** for 46 to 50 years, then reduced by two

units for every five years, i.e., multiplier of **11** for 51 to 55 years, multiplier of **9** for 56 to 60 years, multiplier of **7** for 61 to 65 years and multiplier of **5** for 66 to 70 years.

22. In **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]** a Constitution Bench of the Apex Court held that, as far as the multiplier is concerned, the Claims Tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of **Sarla Verma**, read with paragraph 42 of the said judgment.

23. In the instant case, at the time of accident, the appellant was aged 46 years and she was working as a Typist in Forest Headquarters, Vazuhuthacaud, earning a monthly income of Rs.18,376/-. The permanent disability of 8%, on account of the injuries sustained in the accident, will have no bearing on her earning capacity till her retirement from service on attaining the age of superannuation. However the said disability will certainly have an adverse impact on her earning power, after retirement from service. Therefore, the appellant is entitled for grant of compensation under the head permanent disability, taking Rs.9,188/- (i.e.

50% of her monthly salary of Rs.18,376/-) as her notional monthly income after her retirement from service on superannuation; and applying the multiplier of **9** applicable to the age group of 56 - 60 years.

24. Towards compensation for permanent disability, the Tribunal awarded a sum of Rs.17,280/- ( $6,000 \times 12 \times 3 \times 8/100$ ). Since the monthly income of the appellant after her retirement is fixed notionally as Rs.9,188/-, applying the multiplier of 9 applicable to the age group of 56 - 60 years and the percentage of permanent disability as 8%, the compensation under the head permanent disability is re-fixed as Rs.79,384/- ( $9,188 \times 12 \times 9 \times 8/100$ ), resulting an additional compensation of **Rs.62,104/-** ( $79,384 - 17,280$ ).

25. Towards loss of amenities, the Tribunal awarded a sum of Rs.20,000/-. Considering the nature of injuries sustained and 8% permanent disability on account of those injuries, as fixed by the Tribunal, the compensation awarded by the Tribunal under this head cannot be said to be on the lower side, which requires no enhancement in this appeal.

26. In the result, the appellant/claimant will be

entitled for payment of an additional compensation of **Rs.62,354/-** (Rupees sixty two thousand three hundred and fifty four only) [250 + 62,104] in this appeal, which will carry interest at the rate of **8%** per annum from the date of petition till realisation, excluding the period of delay of 421 days in filing this appeal, which was condoned by the order dated 24.01.2020 in C.M.Appln.No.2 of 2019, subject to the condition that in case enhanced compensation is granted in this appeal, the appellant shall not be entitled for interest on the said amount for the period of delay. The 3<sup>rd</sup> respondent insurer shall satisfy the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment, after deducting the liability, if any, of the appellant/claimant towards Balance Court Fee and Legal Benefit Fund. The disbursement of additional compensation to the appellant/claimant shall be made taking note of the law on the point and in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06.09.2019 and clarified further in Official Memorandum No.D1-62475/2016

dated 07.11.2019. The appellant shall provide her Bank account details (attested copy of the relevant page of the Bank Passbook having details of the Bank Account Number and IFSC Code of the branch) before the Tribunal, with copy to the learned counsel for the insurer, within one month from the date of receipt of a certified copy of this judgment.

This appeal is disposed of as above. No order as to costs.

Sd/-

**ANIL K.NARENDRA, JUDGE**

AV/3/2