

M.A.C.A. No. 2441/2014

: 1 :



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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 13TH DAY OF NOVEMBER 2024 / 22ND KARTHIKA, 1946

MACA NO. 2441 OF 2014

AWARD DATED 19.05.2014 IN OP(MV) NO.227 OF 2011 OF III ADDITIONAL
MACT, KASARAGODE

APPELLANT/PETITIONER:

NIYAS
AGED 24 YEARS
S/O. MUHAMMED C.H., CHATHAPPADY HOUSE, P.O.NEKRAJE,
KASARAGOD DISTRICT, REPRESENTED BY HIS FATHER THE POWER OF
ATTORNEY HOLDER, MUHAMMED C.H., CHATHAPPADY HOUSE,
P.O.NEKRAJE, KASARAGOD DISTRICT.

BY ADV SRI.K.P.HARISH

RESPONDENTS/RESPONDENTS:

- 1 MOHANA
AGED 28 YEARS
S/O. VISWANATHA, DOOR NO. 383 A , KUMBLA GRAMA PANCHYATH,
(DRIVER OF KL 14B 9687) - 671 321.
- 2 ABOOBACKER SIDDIQUE
S/O. MOOSA, K.K.HOUSE, BADRIYA COMPOUND, KUMBLA, KASARAGOD
DISTRICT (DRIVER OF KL 14B 9687)- 671 321
- 3 THE BRANCH MANAGER
NATIONAL INSURANCE, COMPANY LTD, 3RD FLOOR, HIGH LANE PLAZA,
M.G.ROAD, KASARAGOD - 671 121. (INSURER OF THE VEHICLE
BEARING REG. NO. KL 14B 9687 POLICY NO.
571101/31/09/6300012400)

BY ADV SRI. V.S.SHIRAZ BAVA
R3 BY SRI. LAL K. JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
12.11.2024, THE COURT ON 13.11.2024 DELIVERED THE FOLLOWING:



'CR'

JOHNSON JOHN, J.

M.A.C.A No. 2441 of 2014

Dated this the 13th day of November, 2024.

JUDGMENT

The appellant was the petitioner in O.P (MV) No. 227 of 2011 on the file of the Motor Accident Claims Tribunal, Kasaragod.

2. According to the appellant, on 11.06.2010, at about 10 p.m., while he was riding a motorcycle, autorickshaw driven by the 1st respondent in a rash and negligent manner caused to hit the motorcycle and thereby, he fell down and sustained grievous injuries. Respondents 2 and 3 are the owner and insurer of the offending vehicle.

3. At the time of trial, Exhibits A1 to A8 were marked from the side of the petitioner and no evidence was adduced from the side of the respondents.

4. After trial and hearing both sides, the Tribunal found that the accident occurred because of the negligence on the part of the 1st respondent. The Tribunal awarded a total compensation of Rs.74,000/-



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to the appellant. The appellant is challenging the quantum of compensation determined by the Tribunal on the ground that the Tribunal has not correctly fixed the notional income and also failed to grant compensation towards loss of earning capacity of the appellant. The compensation granted by the Tribunal on other heads are also on the lower side and therefore, requires interference by this Court in appeal.

5. Heard Sri. K.P. Harish, the learned counsel appearing for the appellant and Sri. Lal K. Joseph, the learned counsel appearing for the 3rd respondent.

6. As per the order dated 20.02.2020, this Court directed the superintendent, District Hospital, Kasaragod to constitute a Medical Board to assess the permanent disability, if any, of the appellant on account of the injury sustained in the motor accident and accordingly, the Medical Board assessed the disability and the medical certificate in this regard is marked as Exhibit X1.

7. According to the appellant, he was aged 21 years at the time of the accident and having a monthly income of Rs.4,500/-. But, the



Tribunal found that the appellant has not succeeded in proving the said monthly income and therefore, fixed a notional income of Rs.3,000/- per month for the purpose of calculating the loss of earning.

8. The decision of the Hon'ble Supreme Court in ***Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. [(2011) 13 SCC 236]*** and ***Syed Sadiq and Others v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735 = 2014 KHC 4027]*** shows that even in the absence of any evidence, the monthly income of an ordinary worker has to be fixed as Rs.4,500/- in respect of the accident occurred in the year 2004 and for the subsequent years, the monthly income could be reckoned by adding Rs.500/- each per year. If the monthly income of the appellant is calculated by adopting the above principle, it will come to Rs.7,500/- as the accident occurred in the year 2010.

9. The learned counsel for the 3rd respondent argued that the appellant claimed only Rs.4,500/- as his monthly income in the claim petition and therefore, it is not just and fair to fix a higher amount as notional income based on the decision in ***Ramachandrappa*** (supra).



The learned counsel for the appellant cited the decisions of the Honourable Supreme Court in ***Meena Devi v. Nunu Chand Mahto @ Nemchand Mahto and others*** [2022 KHC 7080] and ***Nagappa v. Gurudayal singh*** [2003 KHC 15] to point out that the grant of just and fair compensation is a statutory responsibility of the court, and even if a less amount is claimed in the claim petition, the same would not be an impediment to award just compensation in excess of the amount claimed.

10. It cannot be disputed that even a casual worker is entitled for fair wages and the notional income of an ordinary worker has to be fixed after considering the fair wages at the relevant time and only because the appellant was earning less than the fair wages at the time of occurrence, he cannot be denied parity in the matter of notional income, as it is well settled that beneficial legislations with social objective are expected to be interpreted in favour of those for whose benefit the said legislations are made. Therefore, considering the facts and circumstances of the case, I am of the view that the appellant is entitled for the benefit of the decisions of the Honourable Supreme Court in



Ramachandrappa and **Syed Sadiq** (supra) regarding fixation of notional income and that the contention of the 3rd respondent in this regard is not legally sustainable.

11. As per Exhibit X1, medical certificate issued by the Medical Board, the appellant has got limitation of range of movement of: (1) right hip (Active flexion limited to 0-90 degree range); (2) Right knee (Active flexion limited to 0-90 degree range); and (3) Right Ankle movements active range limited to (dorsiflexion plantor flexion limited to (0-50) degree range, inversion -eversion movements of Right ankle limited to 0-30 degree). The permanent locomotor impairment is assessed as 49% in relation to right lower limb.

12. In **Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343**], the Honourable Supreme Court summarised the principles for ascertainment of loss of earning capacity due to permanent disability as follows:

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning



capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

13. According to the appellant, he was working as a salesman and was aged 21 years at the time of the accident. Taking note of the nature of injuries and physical disability assessed in Exhibit X1 and the occupation of the appellant, I am of the view that 20% functional disability can be accepted for the purpose of calculating the compensation for loss of earning power.



14. The decision of the Hon'ble Supreme Court in ***National Insurance Co.Ltd. v Pranay Sethi [(2017) 16 SCC 680]*** and ***Jagdish v. Mohan [(2018) 4 SCC 571]*** shows that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals and in case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years.

15. As per the decision of the Honourable Supreme Court in ***Sarla Verma v. Delhi Transport Corporation and another [(2009) 6 SCC 121 = 2010 (2) KLT 802 (SC)]***, the multiplier applicable for persons aged between 21 to 25 years is 18. The Tribunal granted compensation for loss of earnings for a period of 3 months at the rate of Rs.3,000/- per month. Since the monthly income has been revised to Rs.7,500/-, the appellant would get additional compensation for loss of earnings. Accordingly, an additional compensation of Rs.13,500/- (Rupees Thirteen Thousand Five Hundred only) is awarded towards loss of earnings. When the compensation for loss of earning power due to permanent



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disability of the appellant is calculated as per the criteria mentioned above, the same would come to Rs.4,53,600/- $[(7500 + 40\%) \times 12 \times 18 \times 20/100]$.

16. The next head which requires consideration is pain and sufferings and the amount awarded by the Tribunal is Rs.25,000/-. Taking note of the nature of injuries, period of treatment and disability, an additional compensation of Rs.15,000/- (Rupees Fifteen Thousand) is granted to the appellant under this head.

17. Accordingly, the appellant is entitled to the enhanced compensation as given below:

Particulars	Compensation awarded by the Tribunal (Rs.)	Additional amount granted by this Court (Rs.)
Loss of earnings	9,000/-	13,500/-
Compensation for permanent disability	NIL	4,53,600/-
Pain and sufferings	25,000/-	15,000/-
Total enhanced compensation		4,82,100/-



18. Thus, a total amount of Rs.4,82,100/- (Rupees Four Lakhs Eighty Two Thousand One Hundred only) is awarded as enhanced compensation. The said amount shall carry interest at the rate of 8% per annum from the date of the application till realization. The appellant would also be entitled to proportionate costs in the case. The claimants shall furnish the details of the bank account to the insurance company for transfer of the amount.

The appeal is allowed as above

sd/-
JOHNSON JOHN,
JUDGE.

Rv