



2024/KER/52428

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G.ARUN

FRIDAY, THE 12TH DAY OF JULY 2024 / 21ST ASHADHA, 1946

MACA NO. 4084 OF 2019

AGAINST THE ORDER/JUDGMENT DATED 18.06.2016 IN OPMV NO.257 OF
2014 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

APPELLANT:

JOBY GEORGE,
AGED 41 YEARS
S/O GEORGE, MUNDAKKAMATTATHIL HOUSE, PERUMBALLICHIRA
KARA, KUMARAMANGALAM VILLAGE, RESIDING AT VELLANKAL
HOUSE, RANDAR KARA, MUVATTUPUZHA VILLAGE,
MUVATTUPUZHA (PO), ERNAKULAM DISTRICT, PIN-686 661.
BY ADV R.BINDU (SASTHAMANGALAM)

RESPONDENTS:

- 1 SIBY VALLORAN
S/O DVASSY, VALLOORAN HOUSE, KORATTY (PO), THRISSUR,
PIN-680 308.
- 2 JOSEPH,
S/O CHERIYAN, PUTHUVA HOUSE, ANGAMALY, KIDANGOOR
KARA, THURAVUR VILLAGE, ERNAKULAM DISTRICT, PIN-683
572.
- 3 NEW INDIA ASSURANCE COMPANY LIMITED,
ANGAMALY, ERNAKULAM DISTRICT, PIN-683 572.
BY ADV RAJIT

OTHER PRESENT:

SRI. RAJIT, R3.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON ADMISSION ON 19.06.2024, THE COURT ON 12.07.2024
DELIVERED THE FOLLOWING:



'CR'

V.G.ARUN, J

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MACA No.4084 of 2019

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Dated this the 12th day of July, 2024

JUDGMENT

The appellant sustained the following injuries in a road traffic accident on 11/10/2013 :-

- i)Abrasion forehead and bridge of nose
- ii)Comminuted displaced segmental fracture both bones left leg
- iii) Blunt injury abdomen
- iv) Fracture dislocation acetabulam (R)
- v) Fracture T6 and T12

2. At the time of accident, the appellant was an interior decoration works contractor. According to the appellant, his monthly salary was Rs.35,000/-. He, therefore, filed claim petition before the Motor Accidents Claims Tribunal seeking Rs.24,98,000/- as compensation, which was limited to Rs.10,00,000/- (Rupees ten lakhs only). By the impugned award, the Tribunal granted total compensation of Rs.3,47,000/- with interest at the rate of 9% p.a. Aggrieved, this appeal is filed.



3. Learned Counsel for the appellant contended that the Tribunal committed gross illegality in taking the appellant's monthly income as Rs.10,000/-.

4. The other ground of challenge is against the unilateral reduction of the percentage of disability from 21% to 12% despite production of Ext.A10 disability certificate. The computation of loss of income for only four months, when compared to the gravity of the injuries sustained and the prolonged treatment is contended to be meagre.

5. Learned Counsel for the insurance company contended that the disability certificate having been issued by a doctor, who had not treated the appellant and Ext.A10 having not been proved by examining the doctor, the Tribunal was justified in discarding Ext.A10 and fixing the percentage of disability on its own. According to the Counsel, just and proper compensation having been granted by the Tribunal, the impugned award warrants no interference. Finally, it is submitted that there being a delay of 931 days in filing the appeal, interest for that period should be excluded, if at all the compensation is enhanced.



6. As far as the challenge against fixation of notional income is concerned, it is to be noted that the appellant had not produced any proof **to prove his** income being Rs.35,000/- per month at the time of accident. In such circumstances, the option available to the Tribunal was to assess the notional income. This could have been done following the decision of the Apex Court in **Ramachandrapa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236]**. In such event, the notional income would be Rs.9,000/- per month. As the Tribunal has taken the appellant's income to be Rs.10,000/-, the said finding warrants no interference.

7. With respect to the challenge against reduction of the percentage of disability, Ext.A10 certificate was issued after the doctor examining the appellant, perusing the wound certificate, discharge summary and treatment certificate. It is clearly stated in Ext.A10 that the findings were entered after examining the appellant clinically as well as radiologically. In **Dileep Antony v. Shobin Sebastian and Others [2022 (6) KHC 105]**, a learned Single Judge of this Court referred to G.O(P) No.161/97/H&FWD dated 15.05.1997 containing the revised



orders/guidelines for issuing disability certificates for production before the Motor Accidents Claim Tribunal, Workmen's Compensation Courts etc., and held that the guidelines are to be followed by Tribunals. As per the G.O(P) No.161/97/H&FWD, the disability certificates are to be issued by a specialist doctor (Government or Private) with not less than 10 years standing in the speciality and who has not treated the patient in the acute stage after the accident. This is to ensure unbiased and accurate assessment of the permanent disability. The Government Order also requires appeals/ second opinion in the case of such certificates to be referred to the State Disability Assessment Board.

8. Apart from the Government Order discussed above, Rule 387 of the Kerala Motor Vehicles Rule, 1989 ('the KMV Rules' for short) confers the Tribunal with the power to direct any Medical Officer in a Government hospital or in a Medical College Hospital or any Board consisting of such officers to examine the injured and issue disability certificate indicating the degree and extent of the disability. As has often been repeated by this Court as well as the Supreme Court, the Motor Accidents Claims Tribunals



cannot sit as mute spectators while considering the claims. Per contra, the Tribunals are expected to take a pro-active role in the decision making process. If the Tribunals have any doubt regarding authenticity or correctness of the certificate, a second opinion can be sought, as provided in the Government Order or in exercise of the power conferred under Rule 387 of the KMV Rules. In the case at hand, the Tribunal has not given any reason for not accepting the finding in Ext.A10, except appellant's failure to examine the doctor who issued the certificate. The said finding cannot be sustained in the light of the Division Bench decision of this Court in **Karunakaran @ Kannan v. Abdul Rasheed and Others** [2015 (5) KHC 355]. Paragraph 7 of that judgment being relevant is extracted hereunder:-

“7.The second reason stated by the Tribunal for rejecting Ext. A8 is that Dr. Jacob P. J. was not the doctor who treated the appellant. This is also unsustainable. There is no binding principle that, in order to rely on a disability certificate, it should have necessarily been issued by the doctor who treated the injured. A Medical Board constituted in a medical college or in a district or general hospital is usually competent enough to assess and certify the disability of a person. The Medical Board so constituted would be comprised of doctors from different



disciplines. None of them may have treated the person who is subjected to assessment. Is it a bar for acting upon the disability certificates issued by such Medical Boards? Certainly not. Similarly, a competent doctor, who may not be the doctor who treated the injured, can examine, assess and certify the disability of the injured giving the required details and reasons in his certificate. Such a medical opinion in regard to disability, temporary or permanent, has to be considered objectively by the Tribunal. If it finds that the opinion of the doctor is acceptable, it is well within the powers of the Tribunal to act upon it and award compensation accordingly. If such opinion of the doctor is found unacceptable, the Tribunal is free to reject it. The doctor who has assessed and certified the disability not being the doctor who has treated the injured cannot be a sound reason for rejecting the disability certificate."

In this context, it is also apposite to note that the Apex Court in **Union of India and Another v. Talwinder Singh [(2012) 5 SCC 480]** has held that the opinion of the Medical Board, which is an expert body, must be given due weight, value and credence. The above being the legal position, the appellant's disability fixed as 21% in Ext.A10 certificate is liable to be accepted as such. Consequently, the compensation for permanent disability suffered is to be recalculated in the



following manner.

Head of claim	Amount awarded by the Tribunal	Amount fixed in appeal	Enhanced compensation
Compensation for permanent disability	Rs.2,16,000/-	Rs.3,78,000/- [10,000x12x15x 21/100].	Rs.1,62,000/- (Rs.3,78,000- 2,16,000/-)

9. The Tribunal having granted just compensation under other heads, the other contentions raised by the Counsel for the appellant are rejected.

10. The amount granted towards enhanced compensation shall be paid to the appellant within three months, with interest as directed by the Tribunal, except for the 931 days of delay in filing the appeal.

The MACA is disposed of as above.

sd/-

V.G.ARUN, JUDGE