IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 27TH DAY OF JULY 2023/5TH SRAVANA, 1945

MACA NO.688 OF 2013
AGAINST THE JUDGMENT/AWARD DATED 22.11.2012 IN OP(MV) No.1531/2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/3rd RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.,
METRO PALACE, GROUND FLOOR, OPP.NORTH RAILWAY STATION,
ERNAKULAM, REPRESENTED BY ITS DULY AUTHORIZED OFFICER.

BY ADV. SRI.V.P.K.PANICKER

RESPONDENTS/PETITIONER & RESPONDENTS 1 AND 2:

1 ABDUL KHADER

2 SUBHITHA SUBAIR,

3 ELDOSE,

BY ADV. SRI.T.R.SUGUNAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 26.06.2023, ALONG WITH MACA.216/2015, THE COURT ON 27.07.2023, DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 27TH DAY OF JULY 2023 / 5TH SRAVANA, 1945

MACA NO.216 OF 2015
AGAINST THE JUDGMENT/AWARD DATED 22.11.2012 IN OP(MV) No.1531/2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,ERNAKULAM

APPELLANT/PETITIONER:

ABDUL KHADER, AGED 47 YEARS

BY ADV. SRI.T.R.SUGUNAN

RESPONDENTS/RESPONDENTS:

1 SUBITHA SUBAIR,

2 ELDOSE,

3 THE ORIENTAL INSURANCE CO. LTD.,
PATTAMANA BUILDINGS, PUMP JUNCTION,
RAILWAY STATION ROAD, ALUVA. PIN-683101.

4 THE UNITED INDIA INSURANCE CO. LTD.,
KALAMASSERY BRANCH, ERNAKULAM. PIN-683104.

BY ADVS.
SRI.LAL GEORGE
SRI.VPK.PANICKER
SMT.PREETHY R. NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 26.06.2023, ALONG WITH MACA.688/2013, THE COURT ON 27.07.2023, DELIVERED THE FOLLOWING:

'CR'

C.JAYACHANDRAN, J

M.A.C.A.Nos.688 of 2013 and 216 of 2015

Dated this the 26th day of June, 2023

COMMON JUDGMENT

Both the claimant and 3rd respondent/Insurance Company are in appeal from the award dated 22.11.2012 of Motor Accident Claims Tribunal, Ernakulam in O.P.(M.V) No.1531/2007.

2. The appeal first above referred is preferred by the Insurer and the second, by the claimant/injured. The accident took place on 27.04.2007, when the Scooter driven by the claimant was rammed by a bus, driven by the 2nd respondent, owned by the 1st respondent and insured by the 3rd respondent. The claimants suffered substantial injuries. Before the Tribunal, Exts.A1 to A12 were marked on behalf of the claimant, besides examining PW1. Certificate from the Medical Board, Ext.C1, was also marked. No evidence, oral or documentary, whatsoever, was adduced by the respondents. The

Tribunal found that the accident occurred on account of the negligent driving of the 2nd respondent and granted a total compensation of Rs.5,54,548/-, together with interest at the rate of 8% per annum, from the date of petition till realisation. The 3rd respondent/Insurance Company was directed to effect payment on behalf of the 1st respondent/owner.

3. Heard Sri.V.P.K.Panicker, the learned counsel for the appellant/insurer in M.A.C.A. 688/2013 and Smt.P.S.Geetha Kumari, the learned counsel for the appellant in M.A.C.A. No.216/2015. Perused the records.

4. In M.A.C.A.No.688/2013, the appellant/ Insurance Company (3rd respondent before the Tribunal) essentially contended that as per the evidence adduced, the claimant/injured has not suffered any loss of income on account of the disability, wherefore, the Tribunal erred in granting Rs.1,62,000/- as compensation for permanent earning disability, reckoning Rs.1,500/- per month as the diminished salary for a future period of 9 years.

The earning disability of 15% found by the Tribunal was also assailed, especially in the context of reckoning the same for a period of 5 years, post retirement. It was also contended that grant of Rs.25,000/- towards compensation of continuing and permanent disability, over and in addition to Rs.1,98,000/- as compensation for loss of earning power and Rs.10,000/- for loss of amenities, is grossly illegal.

5. Whereas, in M.A.C.A.No.216/2015, the appellant/claimant would contend that the Tribunal seriously erred in applying the split multiplier method frowned upon by the Honourable Supreme Court time and again. The finding of the Tribunal as 15% functional disability, as against the 44% neurological disability assessed by the Medical Board, was also assailed. It was urged that the impact of the disability in the life of the claimant, especially in the context of 'loss of amenities and conveniences' and also hardship caused to the claimant, was not properly addressed by the

Tribunal.

6. Having heard the learned counsel appearing for the respective parties, this Court will first address the issue of split multiplier being applied by the Tribunal in the given facts. Based on the evidence tendered by PW1, one of the Directors in the hospital, where the claimant is working as a Pharmacist, the Tribunal reckoned a diminution of Rs.1,500/- in the monthly salary of the claimant. The Tribunal also reckoned the functional disability at 15%, based on the 44% neurological disability assessed by the Medical Board. Accordingly, the monetary loss, on account of disability was calculated by splitting the multiplier of '14' into '9' and '5', the former for the period upto retirement, and the later, post retirement. For the period upto retirement, the diminution in the monthly salary of Rs.1,500/- was reckoned, to which the multiplier '9' was applied and for the period post retirement, a notional income of Rs.4,000/- was taken, to which the multiplier '5' was applied.

7. According to the learned counsel for the claimant (appellant in M.A.C.A. No.216/2015), the method adopted by the Tribunal is surely impermissible, going by the judgments of the Honourable Supreme Court in ***Jayasree N. and Others v. Cholamandalam MS General Insurance Company*** [AIR 2021 SC 5218] and ***Usha Kumari and Others v. Reliance General Insurance Company*** [Civil Appeal No.3649/2022]. The learned counsel also relied upon the judgments of the Honourable Supreme Court in ***Sarla Verma and Others*** *v.* ***Delhi Transport Corporation*** **and another** [(2009) 6 SCC 121], ***Reshma Kumari v. Madan Mohan*** [(2013) 9 SCC 65], both approved and reiterated by a Constitution bench of the Honourable Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others*** [(2017) 16 SCC 680].

8. Per contra, the learned counsel for the 3rd respondent/Insurance Company (appellant in M.A.C.A. No.688/2013) relied upon the judgments of this Court in ***Padmavathi and Others v. Kamalakshan P. and***

Others [2019 (4) KHC 777]; ***Special Grade Secretary, Kumily Panchayath v. Maniammal and Others*** [2017(5) KHC 606(DB)]; ***National Insurance Co. Ltd. and Others v. Kadeeja Musliyar and Others*** [2021 (3) KHC 1]; ***Valsa and Others v. Ulahannan Thomas and Others*** [2015 (1) KHC 729 (DB)] etc. The learned counsel emphatically argued that the cases relied upon by the learned counsel for the claimant were all death cases wherein the Honourable Supreme Court deprecated the practice of applying split multiplier, which need not be the correct legal position with respect to the injury cases, like the present one.

9. In addressing this issue, this Court should primarily refer to the Constitution bench decision in ***Pranay Sethi*** (supra) inasmuch as ***Sarla Verma*** (supra) and ***Reshma Kumari*** (supra), both were considered in detail in the said judgment. In paragraph 29, the Constitution bench undertook a detailed analysis of ***Sarla Verma*** (supra). The fact that there has been considerable variation and

inconsistency in applying the principles relating to assessing the compensation by the Courts and Tribunals, as taken note of in ***Sarla Verma*** (supra), is referred to by the Constitution bench. ***Sarla Verma*** (supra) considered in detail the judgments in ***Kerala SRTC v. Susamma Thomas*** [(1994) 2 SCC 176] and ***U.P.SRTC v. Trilok Chandra*** [(1996) 4 SCC 362] and observed that lack of uniformity and consistency in awarding compensation has been a matter of serious concern. It was noticed that common man become confused, perplexed and bewildered on account of the fact that the different Tribunals calculate compensation differently on the same facts. In paragraph 30, the Constitution bench quoted paragraph 24 of ***Sarla Verma*** (supra), wherein it is *inter alia* observed thus:

> *30. xxxxx*
> *"24. xxxx*
> *Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will*

> *usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."*

10. Having observed so, the Constitution bench in paragraph 30 of ***Pranay Sethi*** (supra) took note of the dictum laid down by a three judge bench in ***Reshma Kumari*** (supra), which agreed with multiplier method determined in ***Sarla Verma*** (supra), holding that by adopting the multiplier prepared in ***Sarla Verma*** (supra), uniformity and consistency can be achieved. In short, the multiplier method propounded in ***Sarla Verma*** (supra), was reiterated and approved in ***Reshma Kumari*** (supra). In paragraphs 44 and 45, the Constitution bench accepted the multiplier method adopted by ***Sarla Verma*** (supra) and ***Reshma Kumari*** (supra). The Constitution bench opined in paragraph 44 that it concurs with the multiplier method fixed in ***Sarla Verma*** (supra) and approved in ***Reshma Kumari*** (supra); and opined in paragraph 45 that following the same will subserve the cause of justice, avoiding unnecessary contentions before the

Tribunals and Courts.

11. It is true that ***Sarla Verma*** (supra), ***Reshma Kumari*** (supra) and ***Pranay Sethi*** (supra), they are all dealing with death cases. The moot question is whether the dictum as regards the multiplier method laid down in ***Sarla Verma*** (supra), approved in ***Reshma Kumari*** (supra) and reiterated by the Constitution bench in ***Pranay Sethi*** (supra), would undergo any change, if the result of the accident is an injury, instead of a death. This Court is of the definite opinion that it would not. The very purpose of adopting the multiplier method in ***Sarla Verma*** (supra) is to do away with the considerable variation and inconsistency in assessing compensation and also to bring uniformity and consistency. In ***Sarla Verma*** (supra), the Honourable Supreme Court had gone to the extent of holding that, even if the evidence may indicate a different percentage of increase, it is necessary to standardise to avoid different yardsticks being applied or different methods of calculation being

adopted. It is this logic, which has been approved in ***Reshma Kumari*** (supra) and reiterated in ***Pranay Sethi*** (supra). In ***Pranay Sethi*** (supra) as indicated earlier, the Honourable Supreme Court specifically concurred with ***Sarla Verma*** (supra) and ***Reshma Kumari*** (supra) and opined that following the multiplier method will subserve the cause of justice, avoiding unnecessary contentions before the Tribunals and Courts. If this be the logic for adopting the multiplier method, can any change in the legal position be conceded for the reason that the result of the accident is an injury - especially in cases of serious injuries as available in the present case - instead of a death? The answer to the above question is surely negative, in the estimation of this Court, having regard to the logic and purpose behind adopting the multiplier method.

12. In the light of the above discussion, this Court finds that the Tribunal went wrong in applying the split multiplier method. This Court notices that the issue was considered by the Honourable Supreme

Court in ***Jayasree N.*** (supra) and ***Usha Kumari*** (supra), where again the Honourable Supreme Court has frowned upon the split multiplier method and reiterated the multiplier method. This Court, therefore finds that instead of applying the multiplier of '9' and '5' to the pre-retirement and post-retirement respectively, a standard multiplier of '14' has to be applied. It is so held.

13. Coming to facts, this Court will straight away refer to the neurological disability assessed by the Medical Board vide Ext.C1. The relevant findings are extracted here below:

> *"**Present disabilities are***
> *1. Bilateral anosmia----3%*
> *2. Visual deficit left temporal hemianopia-15%*
> *3. Scar over forehead with hypoesthesia-7%*
> *4. Forgetfulness, easily getting angry, risk of post traumatic epilepsy-----7%*
> *5. Left hemiplegia can walk with difficulty, climbing heights difficult-12%*
> ***Total permanent neurological disability 44% (forty four percentage)**"*

14. What is essential to be noticed from the above is that the claimant/injured suffered from Hemiplegia with 12% disability and with difficulty

in walking and climbing heights. Another important disability is the visual deficit left temporal hemianopia to an extent of 15%, a disability not considered by the Tribunal for non examination of doctor, who issued Ext.A4 Medical Certificate. The visual disability certified by Ext.A4 is to a great extent probablised by the findings of the Medical Board in Ext.C1. Therefore, the failure to examine the doctor, who issued Ext.A4, should not have been treated as fatal. That apart, this Court also notices a broad probability of the claimant suffering visual disability, inasmuch as one among the injury suffered is on the eye lid of the claimant, as could be seen from the injury no.2 noted in paragraph no.8 of the impugned award.

15. Although this Court cannot find any anomaly with the finding of the Tribunal as regards functional disability at 15%, this Court is the opinion that the Tribunal lost sight of the impact of the disability on the personal life of the claimant, especially in the context of 'loss of

amenities and conveniences in life'. In ***Raj Kumar v. Ajay Kumar*** [(2001) 1 SCC 343], the Honourable Supreme Court had discussed in detail the general principles of compensation in injury cases, whereunder, the heads under which compensation has to be awarded is categorised in paragraph no.6, which is extracted here below:

> *"6. The heads under which compensation is awarded in personal injury cases are the following:*
> *Pecuniary damages (Special damages)*
>
> *(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.*
> *(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:*
> *(a) Loss of earning during the period of treatment;*
> *(b) Loss of future earnings on account of permanent disability.*
> *(iii) Future medical expenses.*
>
> *Non-pecuniary damages (General damages)*
>
> *(iv) Damages for pain, suffering and trauma as a consequence of the injuries.*
> *(v) Loss of amenities (and/or loss of prospects of marriage).*
> *(vi) Loss of expectation of life (shortening of normal longevity).*
>
> *In routine personal Injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that*

> *compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."*

16. In the instant facts, as already noticed above, the claimant had suffered left hemiplegia with difficulty in walking and climbing heights. The Tribunal reckoned 'loss of amenities' only at Rs.10,000/-, which is grossly inadequate in the estimation of this Court. It is relevant to note that the neurological disability certified at 45% is permanent disability going by Ext.C1, which forecloses any possibility/chance of improving the medical situation. Hemiplegia implies paralysis of one side of the body. As per the injuries referred to in paragraph 8 of the impugned award, the claimant had suffered frontal heamorrhagic contusion, SAH, besides a fracture at C2 vertibra and spinal cord contusion at C3 level.

17. This court is of the opinion that the claimant is entitled to a sum of Rs.1,00,000/- at least under the head 'loss of amenities', which loss

he had to bear for the rest of his life from the age of 40, when he met with the accident. Having held so, this Court is of the opinion that a further compensation for continuing and permanent disability is not called for, wherefore the compensation of Rs.25,000/- granted under the head has to be excluded.

18. Another count which require interference is compensation under the head 'pain and suffering', for which the Tribunal has granted Rs.30,000/- only. It is important to note that the claimant has suffered as many as four fractures and spinal cord contusion at C3 level, besides injuries on head and eye lid. He had undergone 64 days of hospitalisation in three different spells. The four fractures are noted as injury nos.4 and 5, as extracted in paragraph 8 of the impugned award. This Court is of the opinion that a sum of Rs.50,000/- at least has to be awarded under the head 'pain and suffering'.

19. One final head under which the claimant is entitled to enhancement in compensation is 'extra

nourishment'. For 64 days of hospitalisation, the Tribunal has awarded only Rs.4,000/-. Calculated at the rate of Rs.200/- per day, this Court is of the opinion that the claimant is entitled to Rs.12,800/- towards 'extra nourishment'.

20. In the result, this M.A.C.A.No.216/2015 is allowed and the compensation amount payable to the claimant/appellant is reworked and indicated in the tabular statement here below:

Sl. No.	**Head of Claim**	**Amount awarded by the Tribunal**	**Total amount after enhancement in appeal**
1	Loss of earnings	53,048	53,048
2	Transport to hospital and back home	3,000	3,000
3	Damage to clothes and articles	500	500
4	Extra nourishment	4,000	12,800 [200x64 days]
5	Medical Expenses	2,18,000	2,18,000
6	Bystander's expenses	13,000	13000
7	Compensation for pain and sufferings	30,000	50,000
8	Compensation for continuing and permanent disability	25,000	Nil
9	Compensation for loss of earning power	1,98,000	3,16,800 [*2,52,000+**64,800]
10	Compensation for loss of amenities and	10,000	1,00,000

	enjoyment in life		
	Total	**5,54,548**	**7,67,148**
Amount enhanced = Rs.7,67,148/-Rs.5,54,548/ = **Rs.2,12,600/- (Two Lakhs Twelve Thousand and Six Hundred Only)**			

*1,500x12x14
**4,000x12x9x15%

21. The Insurance Company shall pay interest for the amount awarded by the Tribunal at the rate directed in the impugned award; and for the enhanced amount, at the rate of 8% from the date of petition. If any amount has already been paid, the same shall be granted set off. Since there was a delay of 684 days in filing the appeal, the interest for the enhanced quantum shall not run for the said period as directed in order dated 08.02.2022 in C.M. Application No.1/2015 in M.A.C.A.216/2015.

22. The claimant shall produce the details of the Bank account before the Insurance Company/ Tribunal within two months from the date of receipt of a certified copy of this judgment and the amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not given within

the time stipulated, it is made clear that, no interest shall run on the enhanced amount after the period stipulated by this Court. However, if the Insurance Company fails to deposit the amount, as directed, interest on the enhanced amount shall also run at the rate ordered by the Tribunal from the date of petition.

M.A.C.A.No.216/2015 is allowed to the above extent and M.A.C.A.No.688/2013 will stand dismissed.

Sd/-
C.JAYACHANDRAN, JUDGE

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