2025:KER:16005

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 27TH DAY OF FEBRUARY 2025 / 8TH PHALGUNA, 1946

MACA NO. 139 OF 2019

AWARD DATED 28.07.2018 IN O.P(MV) NO.1129 OF 2014 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA

APPELLANT/PETITIONER:

SUJA SAJEEV,
PUTHENVEETTIL HOUSE, MALAYALAPUZHA THAZHAM P.O.,
MALAYALAPUZHA VILLAGE, KONNY TALUK.

BY ADVS.
T.K.KOSHY
SRI.SABU I.KOSHY

RESPONDENTS/RESPONDENTS 1 TO 3:

1 USHA, W/O.DEVARAJAN, MALAYALAPUZHA THAZHAM P.O., MALAYALAPUZHA , PIN-689 666.

2 THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD., DIVISIONAL OFFICE, NELSON COMPLEX, P.B.NO.60, KAYAMKULAM-690 502.

R2 BY BY SMT. RAJI T.BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25.02.2025, THE COURT ON 27.02.2025 DELIVERED THE FOLLOWING:

2025:KER:16005

JOHNSON JOHN, J.

M.A.C.A No. 139 of 2019

Dated this the 27th day of February, 2025.

JUDGMENT

This appeal is filed by the petitioner in O.P. (MV) No. 1129 of 2014 on the file of the Motor Accident Claims Tribunal, Pathanamthitta seeking enhancement of compensation.

2. According to petitioner, on 16.06.2014, while she was travelling as a pillion rider in a motorcycle ridden by the 1st respondent in a rash and negligent manner, the 1st respondent lost control of the vehicle and thereby, the petitioner fell down and sustained serious injuries. The 1st respondent was also the owner of the offending vehicle and 2nd respondent was the insurer.

3. Before the Tribunal, Exhibits A1 to A10 were marked from the side of the petitioner and no evidence adduced from the side of the respondents.

4. The Tribunal recorded a finding that the accident occurred because of the negligence on the part of the 1st respondent and that

2025:KER:16005

respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioner. The Tribunal awarded total compensation of Rs.88,437/- to the petitioner.

5. Heard Sri. T.K. Koshy, the learned counsel for the appellant and Smt. Raji T. Basheer, the learned counsel for the respondent insurance company.

6. The learned counsel for the appellant argued that the appellant was aged 32 years and earning Rs.18,000/- per month from her occupation as a dairy farmer and the Tribunal fixed only Rs.5,000/- as notional monthly income and the same is on the lower side. Admittedly, no evidence is adduced to prove the income claimed and it was in that circumstance the Tribunal fixed the notional income. 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

2025:KER:16005

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.9,500/-, as the accident occurred in the year 2014.

7. Considering the facts and circumstances, I find that it is only reasonable to fix the monthly income of the appellant as Rs.9,500/- for the purpose of calculating the compensation.

8. The treatment records of the appellant shows that she sustained fracture ribs right 1, 2 & 3; and lacerated wound on right temporal region. The learned counsel for the appellant argued that as per Exhibit A8 disability certificate, the appellant is having 5% permanent disability and without following the principles for ascertainment of loss of earnings capacity due to permanent disability, the Tribunal accepted only 4% functional disability and the same is not justifiable.

9. 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:

2025:KER:16005

(*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.

10. Considering the nature of injuries, period of treatment and physical disability assessed in Exhibit A8 and the occupation of the appellant, I find that it is only reasonable to accept 5% functional disability for the purpose of calculating the compensation for loss of earning capacity.

2025:KER:16005

11. 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.

12. The Tribunal accepted 16 as the multiplier applicable by following the decision of the Honourable Supreme Court in ***Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)].*** Thus, while reassessing the compensation for loss of earning capacity as per the revised criteria, the amount would come to Rs.1,27,680/-[(9500 + 40%) x 12 x 16 x 5/100]. The Tribunal has already granted Rs.38,400/- under this head. Hence, an additional compensation of Rs.89,280/- is granted to the appellant under this head.

13. The learned counsel for the appellant argued that the Tribunal granted loss of earnings only for 2 months. Considering the nature of

2025:KER:16005

injuries and period of treatment, I find that loss of earnings for a period of 3 months can be given and when the same is calculated as per the revised notional income, the amount would come to Rs.28,500/-. The Tribunal has already granted Rs.10,000/- under this head and hence, an additional compensation of Rs.18,500/- is granted to the appellant under this head.

14. The learned counsel for the appellant pointed out that the Tribunal has granted only Rs.25,000/- towards 'pain and sufferings' and only Rs.5,000/- towards 'loss of amenities' and the same is on the lower side. Taking note of the nature of injuries, period of treatment and disability, an additional compensation of Rs.10,000/- each is granted to the appellant under the heads—'pain and sufferings' and 'loss of amenities'. I find that the compensation granted by the Tribunal under the other heads are reasonable and requires no interference.

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

2025:KER:16005

Particulars	Compensation awarded by the Tribunal (Rs.)	Additional amount granted by this Court (Rs.)
Loss of earning capacity	38,400/-	89,280/-
Loss of earnings	10,000/-	18,500/-
Pain and sufferings	25,000/-	10,000/-
Loss of amenities	5,000/-	10,000/-
		1,27,780/-
Total enhanced compensation		

16. Thus, a total amount of Rs.1,27,780/- (Rupees One Lakh Twenty Seven Thousand Seven Hundred and Eighty only) is awarded as enhanced compensation. The said amount shall carry interest at the rate of 9% per annum from the date of the application till realization. The appellant would also be entitled to proportionate costs in the case. The claimant 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