

**Benson Vs. Sivadasan**

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**SooperKanoon Citation :** [sooperkanoon.com/3060](http://sooperkanoon.com/3060)

**Court :** Kerala

**Decided On :** Nov-25-2014

**Judge :** Honourable Mr.Justice T.R.Ramachandran Nair

**Appellant :** Benson

**Respondent :** Sivadasan

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA TUESDAY, THE 25TH DAY OF NOVEMBER 2014 4TH AGRAHAYANA, 1936 MACA.No. 2556 of 2014 () ----- AGAINST THE AWARD IN OPMV13422006 of MACT, MAVELIKKARA DATED 30/06-2014 APPELLANT/PETITIONER:-: ----- BENSON, MOONUPARAYIL, BENSON VILLA, THEKKEKARA KIZHAKKUM MURI PALLIPAD. BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL) SRI.A.R.DILEEP SRI.MANU SEBASTIAN PARVATHY NAIR RESPONDENTS/RESPONDENTS:-: ----- 1. SIVADASAN, ETTUPARAYIL VEETIL, THEKKEKARA KIZHAKKUM MURI KARIPUZHA P.O., PALLIPPAD - 690 512.

2. THE ORIENTAL INSURANCE COMPANY LTD., REPRESENTED BY ITS BRANCH MANAGER KAYAMKULAM - 690 502. R2 BY ADV. SRI.M.JACOB MURICKAN R BY SMT.K.S.SANTHI THIS MOTOR ACCIDENT CLAIMS APPEAL

HAVING COME UP FOR ADMISSION ON2511-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- M.A.C.A No.2556 of 2014-D

----- Dated this the 25th day of November, 2014

## JUDGMENT

### **Ramachandran Nair, J.**

Claimant before the Tribunal aggrieved by the compensation awarded has filed this appeal. He was injured in an accident which occurred on 05.04.2006 at 2 p.m. At that time, he was riding his Scooter bearing Reg.No.KL-04/T-2036 and the Scooter driven by the 1st respondent bearing Reg.No.KL- 04/F-9799 hit against the Scooter driven by the appellant.

2. He sustained the fracture of right thigh bone as well as the lacerated injury on the right thigh, going by Ext.A5 wound certificate.

3. The learned counsel for the appellant submitted that in spite of the fact that the appellant produced Ext.A8 disability certificate showing disability as 10%, which is of a permanent character, the Tribunal has reduced it to 3% without any justification. It is also submitted that he was only aged 19 and was working as an Electrician. But his monthly income was fixed M.A.C.A No.2556 of 2014-D2at Rs.4,000/- without reckoning any amount towards future prospects. It is also submitted that the compensation for loss of amenities and pain and sufferings do not reflect a correct assessment.

4. The learned counsel for the Insurance Company submitted that a fairly good award has been passed and the Tribunal did not accept Ext.A8 disability certificate since the Doctor who treated him was not examined.

5. We find from a reading of the award that in Ext.A8 disability certificate the permanent disability was assessed at 10% on the following reasons: "1. There is 1

cm shortening of right femur due to malunion at the fracture site of femur.

2. There is 100 limitation of knee flexion, hip flexion and 80 limitation of rotative of right hip.

3. Difficulty in squatting, climbing up and down etc." The appellant could not examine the Doctor who treated him as he was transferred. In para.14 the details of Ext.A5 series of discharge cards have been noted down. He was admitted on 16.02.2008 and was discharged on 21.02.2008 going by the discharge cards issued by the Medical College Hospital, M.A.C.A No.2556 of 2014-D3Alappuzha and Kottayam. It is also seen from the discharge card issued from the Medical College Hospital, Kottayam that knailing was removed on 18.2.2008. Ext.A5 series again will show that he was admitted in the Medical College Hospital Kottayam and knail removal done on 18.02.2008 and he was discharged on 21.02.2008. Old united fracture SOF right and knail insitu were noted in Ext.A5 series. Ext.A8 was issued by the Assistant Professor in Orthopaedics, Medical College, Alappuzha. The claimant was examined as PW1. We are of the view that, in the light of the evidence of PW1 supported by the medical certificate the disability could have been assessed at 10% instead of taking it as 3% and no other reason is shown to refix the disability as 3%.

6. Even though the learned counsel for the appellant submitted that a higher amount could have been reckoned for considering the monthly income, it is clear that he was not having a permanent employment and was not drawing salary on a fixed scale. In that view of the matter, as the accident occurred in 2006, the amount taken in 2006 as Rs.4,000/- towards monthly income is reasonable. But the disability compensation will be the following: M.A.C.A No.2556 of 2014-D4Rs.4,000.00X12X10%X18 = Rs.86,400.00.

7. The Tribunal has fixed the compensation in the following manner. Sl.No. Head of claim Amt. 1 Loss of earnings Rs. 12,000.00 2 Transport to hospital Rs. 3,050.00 3 Extra nourishment Rs. 1,000.00 4 Damage to clothing Rs. 500.00 5 Medical expenses Rs. 3,210.00 6 Bystander's expenses Rs. 3,450.00 7 Compensation for pain and sufferings Rs. 20,000.00 Compensation for permanent or continuing Rs. 25,920.00 8 disability 9 Compensation for loss of amenities in life

Rs. 12,000.00 Total Rs. 81,130.00 8. In the light of the fact that he was under treatment on different occasions as an inpatient, we find that for the bystander's expenses, Rs.200/- per day can be granted and accordingly we refix the same as Rs.4,600/-. Towards pain and sufferings also, we add Rs.10,000/- more in view of the seriousness of injuries and the treatment undergone by him. For loss of amenities in life, the Tribunal has awarded Rs.12,000/-. In the light of the disability sustained by him, we grant an M.A.C.A No.2556 of 2014-D5 amount of Rs.20,000/- towards loss of amenities and enjoyment of life. Apart from the same, since he was only aged 19 years, we grant an amount of Rs.10,000/- towards loss of marriage prospects and accordingly we modify the award in the following manner:

Sl.No.	Head of claim	Amt.
1	Loss of earnings	Rs. 12,000.00
2	Transport to hospital	Rs. 3,050.00
3	Extra nourishment	Rs. 1,000.00
4	Damage to clothing	Rs. 500.00
5	Medical expenses	Rs. 3,210.00
6	Bystander's expenses	Rs. 4,600.00
7	Compensation for pain and sufferings	Rs. 30,000.00
8	Compensation for permanent or continuing disability	Rs. 86,400.00
9	Compensation for loss of amenities in life	Rs. 20,000.00
10	Compensation for loss of marriage prospects	Rs. 10,000.00
Total		Rs.1,70,760.00

Therefore, the appellant will be entitled to a total compensation of Rs.1,70,760/-, which we round off to Rs.1,70,800/- (Rupees One lakh seventy thousand eight hundred only). Since the appellant has limited the compensation to Rs.1,40,000/-, he will have to pay court fee for the remaining amount of Rs.30,800/- and the Tribunal will disburse the amount awarded only after M.A.C.A No.2556 of 2014-D6 realising the balance amount towards court fee. We also feel that interest can be granted as 9% instead of 7.5% granted by the Tribunal from the date of petition in the light of various decisions of the Apex Court. There will be a direction to the Insurance Company to deposit the amount awarded less the amount already deposited if any, within three months from the date of receipt of a certified copy of the judgment. The appeal is accordingly allowed. No costs. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge