

**Rajendran Vs. E.K.Shaji**

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**SooperKanoon Citation :** [sooperkanoon.com/63399](http://sooperkanoon.com/63399)

**Court :** Kerala

**Decided On :** Jul-31-2015

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

**Appellant :** Rajendran

**Respondent :** E.K.Shaji

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH FRIDAY, THE 31<sup>ST</sup> DAY OF JULY 2015 9<sup>TH</sup> SRAVANA, 1937 MACA.No. 1569 of 2005 ( )  
----- AGAINST THE AWARD IN OPMV10371998 of M.A.C.T.,ERNAKULAM DATED 30/09-2003 APPELLANT/PETITIONER:  
----- RAJENDRAN,  
S/O.SIVASANKARA PILLAI, THETTIKOTTU HOUSE, GEETHA BHAVAN, NEAR FIRE STATION PERUMBAVOOR. BY ADV. SRI.K.K.MOHAMED RAVUF  
RESPONDENTS/RESPONDENTS: ----- 1.  
E.K.SHAJI, S/O.KOCHUVAREED, EACHARATH HOUSE, KODAKARA.  
  
2. K.D.JOSEPH, S/O.K.J.DEVASSY, KALATHINGAL HOUSE, VALLAPPADI DESOM, KODAKARA.

3. UNITED INDIA INSURANCE CO LTD., BRANCH OFFICE, IRINJALAKUDA. R3 BY ADV. SRI.J.MATHAPPAN R3 BY ADV. SMT.D.GEETHA R3 BY ADV. SRI.AGINOV MATHAPPAN R3 BY ADV. SMT.K.SHERIN MOHAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & K.P.JYOTHINDRANATH, JJ.

----- M.A.C.A.No.1569 OF2005-----  
----- Dated this the 31st day of July, 2015

## JUDGMENT

### **Jyothindranath, J.**

This appeal is preferred by the petitioner in O.P.(MV) No.1037/1998 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The quantum of compensation awarded by the Tribunal is under challenge. The facts are as follows : While the appellant was riding the motor cycle bearing Reg.No.KL-7F-4488 from Thrissur to Perumbavoor on 2.6.1998, another motor cycle bearing Reg.No.KL-8F-1002 came from the opposite direction and hit against the motor cycle on which the appellant was riding. In that accident, the appellant sustained very severe injuries. The appellant moved before the Tribunal for compensation arraying the owner, rider and insurer of the motor cycle bearing Reg.No. KL-8F-1002. The Tribunal awarded a total compensation of Rs.4,35,150/-. Aggrieved by the said award, this MACA No.1569/2005 2 appeal preferred.

2. We heard the learned counsel on both sides.

3. The submission of the learned counsel for the appellant is that the appellant was only aged 28 years at the time of the accident. It is the further submission that the appellant was a technician by profession as well as instructor of Karate at Budokan Karate Centre, Perumbavoor. He was also a yoga instructor as well as imparting training in other martial arts. It is the submission that as an instructor, he was getting more than `14,500/- per month and it is also submitted before us that the documents produced before the Tribunal relating to his academic qualifications are marked as Ext.A22 series. It will show that he was a certificate holder in Basic

Programming in Computer Studies. He was diploma holder in Electronics and Television Engineering and further he was having diploma in T.V. And V.C.R. Mechanism and ITC certificate in Air-conditioning and Refrigeration, Welding Technology, Scooter and Motor Cycle Engineering. It is also submitted that Ext.A23 series marked before the Tribunal are certificates and awards relating to sports and games which were MACA No.1569/2005 3 awarded to him. It will indicate that he was having outstanding proficiency in games and sports and he was a trainer of trekking and a Karate master. It is further submitted that witnesses were examined before the Tribunal as PWs 2 and 3 to prove Exts.A20 and A22 to prove his income. It is the further submission that even during 1998, he was having an income of more than `15,000/- and the accident actually crippled his prospects in future and life.

4. The learned counsel for the Insurance Company submitted before us that the accident occurred in the year 1998. The Tribunal adopted an income of `3,000/- per month. It is also submitted that the Tribunal considered all the documents produced as well as the evidence adduced in respect of his income. It is also submitted that even though he was aged 28 years, the Tribunal adopted a multiplier of 18 to assess the loss of income due to disability. It is the further submission that by following the judgment in Sarla Varma v. Delhi Transport Corporation ( 2010 (2 ) KLT802(SC), the multiplier available will be 17. It is the submission of the learned counsel for the Insurance Company that Ext.A17 is the certificate which produced to MACA No.1569/2005 4 show his disability. It will show that his disability is only 25% and that also pertaining to a particular limb.

5. At this juncture, the learned counsel for the appellant submitted that apart from the disability of lower limb, the appellant lost eye site of right eye completely and there is diminution in the vision of the left eye also. Thus practically, his functional disability is 100% and the Tribunal erred in this respect.

6. The injury sustained by the appellant are dealt in detail in paragraph 10 of the award of the Tribunal. The said paragraph is quoted below :

"0. It is proved by medical records that in the accident the petitioner sustained bleeding from mouth, bleeding from nose. Corneal and seleral tear right, fracture

mandible right, fracture zygoma right, fracture frontal sinus. Ext.A6 is a discharge summary issued from Little Flower Hospital which would indicate that the petitioner was admitted in the hospital on 2.6.1998 and on clinical examination found the petitioner had fracture anterior wall right frontal sinus, fracture lateral walls of both maxillary region, fracture right maxilla MACA No.1569/2005 5 with blood collection, fracture right side of mandible undisplaced fracture lower pole of patella put on above knee cast, open reduction of fracture mandible zygoma elevated and he was discharged on 14.6.1998 with advice to follow up treatment and review if there is permanent head-ache, vomiting etc.. Ext.A7 is a discharge summary issued from Little Flower Hospital which would corroborate the terms of Ext.A6. Ext.A6 series are the scan reports dated 2.6.1998 which would indicate that the spine appears normal and small subdural haematoma over right fronto parietal area with cerebral oedema, fracture of right orbital roof, fracture of anterior wall of right frontal sinus, ethmoidal bones, roof of both antra, medial and lateral walls of both maxillary antrum anterior wall of right maxillary antrum and fracture of right mandible ( in body), haemorrhagic collection in both antra and on ethmoidal sinuses ad nasal cavity, ruptured right eye ball with loss of lens and intra-bulbar contents and the scan report dated 10.6.1998 show that there is an evidence of fracture of anterior wall of right frontal sinus and roof of right bony orbit seen and no obvious abnormality detected in brain ( old subdural haematoma has been MACA No.1569/2005 6 resolved compared to previous scan) fracture of right frontal sinus and anterior wall and roof of right orbit. Ext.A10 is an O.P. Card issued from Modern Eye Clinic, Aluva which would indicate that the petitioner was consulted with Doctor on 22.7.1998 and Ext.A11 is another O.P.card issued by Nangelil Hospital, Kothamangalam which would go to prove that he was treated at the hospital on 21.10.1998 and Ext.A12 is an O.P. Card issued from Parathuvayalil Nursing Home, Keezhillam which would go to prove that the petitioner was treated there. Ext.A13 is a discharge card issued from San Joe Hospital, Perumbavoor which would indicate that the petitioner was admitted in the hospital on 10.02.1999 with a complaint of pain on right knee and he was managed conservatively and was discharged on 13.2.1999. Ext.A14 is a refer letter issued by Dr.K.E.Eapen of CBM Ophthalmic Institute, Little Flower Hospital, Angamaly to Dr.S.Natarajan, Adithya Jyot Hospital, Bombay for better treatment

and management. Ext.A15 is a certificate issued by Dr.S.Natarajan, Medical Director of the Centre for Retina Vitreous Surgery Research, Aditya Jyot Eye Hospital, Bombay certified that on examination the petitioner's visual MACA No.1569/2005 7 acuity was PL + Prfaulty, with pinhole no improvement in right eye and 6/6, N6 in left eye, anterior segment evaluation revealed evidence for corneal sutures in right eye and normal in left eye. His interocular pressure was normal in left eye. Fundus examination with binocular indirect ophthalmoscope revealed evidence for no view in right eye and attached retina in left eye. Ultrasonography done in right eye showed right sided complete fixed retinal detachment in a pre-phthysical eye ( axial length approx. 12mm), right eye is best left one as no treatment is possible, and the petitioner was advised periodic follow up for left eye. Ext.A16 is a registration card issued from Chaithanya Eye Hospital and Research Institute, Trivandrum which would indicate that the petitioner had undergone treatment at the hospital on 28.9.1981." 7. He was under treatment for a long period. Here is a case where fractures are sustained to skull and other limbs of the appellant. It can be further seen that he lost eye sight of one eye as well as there is also diminution of eye sight in the remaining eye. It can be further seen that there was disability caused by injuries to his lower limb. MACA No.1569/2005 8 8. Considering all these aspects, we feel that it will be only just and proper to take the functional disability as 50% for assessment purpose. After appreciating the documents and evidence produced before the Tribunal as well as the age of the appellant, it will be only just and proper to take an income of `8,000/- per month for the purpose of assessment of loss of income due to disability. The multiplier available will be 17. It is submitted at the Bar that the appellant was not married. His marriage prospects also will be affected. It is also evident that the injury sustained will obviously affect his amenities. He had undergone long treatments in the hospitals.

9. Thus, just compensation is refixed as follows : Head of claim Amount Awarded in rupees Pain and suffering 50000 Partial loss of earnings 48000 (8000 x 6) Transportation 5000 Damage to cloth 500 Medical expenses 34650 Extra nourishment 3000 MACA No.1569/2005 9 Head of claim Amount Awarded in rupees Loss of amenities 60000 Disfiguration 25000 Loss of marriage prospects 50000 Permanent disability 816000 ( 8000 x 12 x 17 x 50%) Total 1092150

(Rupees ten lakhs ninety two thousand one hundred fifty only) 10. The compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount within a period of three months of this judgment. On deposit of the amount, the Tribunal shall realise the additional court fee as the original claim petition is only for ` 9 lakhs. The appellant is entitled for release of the amount on deposit. The appeal is accordingly allowed. The parties will bear their costs in the appeal. T.R.RAMACHANDRAN NAIR, JUDGE K.P.JYOTHINDRANATH,JUDGE sv.

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