

NON-REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**CIVIL APPEAL NO. 619 OF 2010**

M.K. GOPINATHAN ... APPELLANT
 VERSUS
 J. KRISHNA & ORS. ... RESPONDENTS

JUDGMENT**N.V. RAMANA, J.**

This appeal is directed against the judgment dated 5th March, 2009 passed by the High Court of Kerala in Motor Accident Claims Appeal No. 1441 of 2004.

2. The case of the appellant is that he was employed in Malaysia as a Tool & Die Engineer. He had come to his native town in Kerala to attend his sister's wedding. On 15.5.1996, when the appellant was traveling in a jeep, a bus coming from the opposite direction rammed into the jeep resulting in five deaths and the appellant suffered severe injuries, namely a crush injury on his upper right arm which had to be -

amputated. The appellant was treated as an in-patient in the hospital for 42 days and during which time four surgeries were conducted on him.

3. The appellant filed O.P. (MV) No. 304 of 1997 before the Motor Accident Claims Tribunal claiming Rs.75,00,000/- as compensation. Before the Tribunal, the appellant examined himself as P.W.14. The Tribunal did not believe the version of the appellant that he had been employed permanently as a Tool and Die Engineer in Malaysia and was drawing Rs.50,000/- per month. However, the Tribunal noticed that the appellant is permanently disabled to an extent of 70% due to the injuries sustained by him in the accident. In the absence of any authentic, reliable and acceptable proof produced by the appellant to show his monthly income, the Tribunal considering the fact that the appellant is a qualified Engineer, and having regard to the Schedule to the Workmen's Compensation Act, fixed his monthly income notionally at Rs.3,000/- and considering his age at the time of accident, which is 34, applied the multiplier 17. The Tribunal, passed award on 28.02.2004, awarding compensation to the appellant to a tune of Rs.5,15,700/- in all, with interest thereon at 9% p.a. from the date of claim petition and at 6% p.a. from 31.12.2001.

4. The appellant, being aggrieved by the aforesaid award of the Tribunal, filed M.A.C.A. No. 1441 of 2004 before the High Court of -

Kerala. The Division Bench of the High Court, reassessed the entire case and opined that the Tribunal ought to have reasonably assessed the monthly salary which the appellant was getting at the time of accident. However, taking into consideration, the totality of the facts and circumstances of the case, the High Court fixed the monthly income of the appellant at Rs.5,000/- p.m., instead of Rs.3,000/- fixed by the Tribunal, and enhanced the compensation from Rs.5,15,700/-, as awarded by the Tribunal, to Rs. 8,43,500/-, which is inclusive of Rs.4,200/- awarded towards extra nourishment. The High Court, enhanced the interest payable on the compensation to the appellant from 31.12.2001, from 6% p.a. to 7.5% p.a.

5. Being dissatisfied with the order of the High Court, the appellant filed this appeal before this Court by way of Special Leave Petition.

6. Learned counsel for the appellant contended that both the Tribunal and the High Court have erred in assessing the quantum of compensation payable to the appellant. The compensation awarded is not in consonance with the income and status of the appellant. On the date of accident, the appellant was a Tool and Die Engineer on permanent rolls of a company in Malaysia and was getting salary of Rs.50,000/- p.m., apart from other benefits. Being a well qualified and permanently employed person, the appellant apart from maintaining -

himself in Malaysia, was supporting his family at Kerala by sending substantial amount to them. He submitted that the High Court also failed to take into account the actual monthly income and status of the appellant, and has grossly erred in meagrely enhancing the monthly salary from Rs.3,000/- fixed by the Tribunal to Rs.5,000/- for the purpose of computing the compensation. At the time of accident, the appellant was only 34 years old and in view of the 70% permanent disability suffered during to the injuries sustained by him in the accident, he had lost all the growth avenues. He, therefore, submitted that the appellant, having regard to his qualification, profession and the salary drawn by him, was entitled to be awarded more compensation.

7. On the other hand, learned counsel for the respondents, submitted that the grounds raised in this appeal claiming enhancement of compensation are absolutely devoid of merit. The Division Bench of the High Court has adequately enhanced the amount of compensation by Rs. 3,27,800/-, which is just and reasonable. Hence, it is submitted that the case of the appellant is without any substance and does not require interference from this Court.

8. We have heard learned counsel for the parties and perused the material on record.

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9. The only issue that arises for consideration is whether the compensation payable to the appellant has to be computed based on the assertion made by him that at the time of accident, he was working as Tool and Die Engineer in a company in Malaysia and drawing Rs. 50,000/- p.m.?

10. The appellant, before the Tribunal to prove his monthly income as Rs.50,000/- and in support of his claim for compensation, except examining himself as P.W.4, did not examine any person. According to him, he was working as a Tool and Die Engineer in a company in Malaysia and getting Rs.50,000/- as monthly salary. He did not even produce any authentic certificate to prove his income and qualification. He has produced only a xerox copy of a certificate issued by the Institute of Engineers India showing that he has passed Sections A & B of the Institution's examination in Mechanical Engineering branch. Though the appellant failed to prove his income with documentary evidence, the fact that he was holding an engineering certificate and was working in Malaysia is not in dispute. In the circumstances, taking into consideration the undisputed fact of his qualification, and particularly his working in overseas Company, we feel just and reasonable to consider his monthly income as Rs. 8,000/-.

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11. Accordingly, taking the monthly salary of the appellant as Rs.8,000/-, the compensation payable to him has to be computed. Apart from that, we enhance the amounts payable to the appellant under different other heads in the manner following:

1. Loss of earnings (Rs.8,000/- x 6) minus Rs.18,000/-	Rs. 30,000/- more
2. Loss of amenities (Rs.30,000/- minus Rs.10,000/-)	Rs. 20,000/- more
3. Compensation for reduction In earning capacity (Rs. 8,000/- x 12 x 17 x 70/100) Minus Rs. 4,28,400/- i.e. (Rs. 11,42,400 – Rs.4,28,400/-)	Rs. 7,14,000/- more
4. Extra nourishment	Rs. 20,000/-
5. Bills for payment to doctors	Rs. 6,000/-
Total	Rs. 7,90,000/- more

12. Accordingly, we set aside the impugned order and allow the appeal to the extent indicated above with interest @ 6% p.a. from the date of petition till the date of deposit. There shall be no order as to costs.

.....CJI.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

.....J.
(N.V. RAMANA)

NEW DELHI,
APRIL 17, 2014