

**(2011) 07 KL CK 0119**

**High Court Of Kerala**

**Case No:** MFA No. 17 of 2006

United India Insurance Company  
Ltd.

APPELLANT

Vs

Reju Nair and C.V. Varghese

RESPONDENT

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**Date of Decision:** July 26, 2011

**Hon'ble Judges:** M.L. Joseph Francis, J; K.M. Joseph, J

**Bench:** Division Bench

**Advocate:** Sri Mathews Jacob, for the Appellant; Latha Prabhakaran, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

K.M. Joseph, J.

The Appellant challenges the order passed by the commissioner of Workmens" Compensation, Thrissur by which the Commissioner has awarded a compensation for a sum of Rs. 1,10,108/- along with 12% interest per annum from 28.11.2001 till the date of deposit. The Appellant was made liable to pay the compensation to the first Respondent.

2. The question of law which was apparently pressed when the matter came up on an earlier occasion before this Court was regarding the calculation of loss of earning capacity. The loss of earning capacity at which the Commissioner arrived was 24%. The doctor was examined as AW2, who confirmed Ext.A7 disability certificate. He assessed loss of earning capacity as 27%. Thereafter the commissioner has stated that after hearing on the Medical Board petition, it was decided that the loss of earning capacity was reduced and decided as 24%.

3. When this matter came up before this Court on 4.8.2008, it was noted that the only dispute was regarding loss of earning capacity and the applicant was referred to the Medical Board. The Medical Board had sent up a report in which the loss of earning capacity of the applicant is approximately calculated as 18% considering the fact that he was a heavy vehicle driver at the time of injury.

4. Today we heard the learned senior counsel for the Appellant and learned Counsel for the first Respondent.

5. We are in agreement with the learned senior counsel for the Appellant that the order of the Commissioner fixing the loss of earning capacity as 24% cannot be accepted. In the report of the Medical Board, the loss of earning capacity is calculated approximately as 18%. We see no reason why we should not accept 18% as loss of earning capacity. We accept the loss of earning capacity of the applicant as 18% and on that basis, applying the formula the compensation to the applicant would be Rs. 82,581/- (Rs. Eighty two thousand five hundred eighty one only).

6. Accordingly this appeal is allowed. We modify the order by fixing the liability of the Appellant to the first Respondent as Rs. 82,581/- with 12% interest. It is pointed out that the amount has already been deposited. The first Respondent will be entitled to withdraw Rs. 82,581/- with 12% interest from 28.11.2001 till the date of deposit and the balance amount can be withdrawn by the Appellant.