IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

MACA NO. 954 OF 2021

AGAINST THE AWARD DATED 11.10.2019 IN OPMV NO.1344 OF 2018 OF ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE CO.LTD.,
COCHIN DIVISIONAL OFFICER, RAVIPURAM, M.G.ROAD,
KOCHI - 682 016, REPRESENTED BY ITS MANAGER,
KOCHI REGIONAL OFFICE, OMANA BUILDINGS, JEWS STREET, MG ROAD, ERNAKULAM - 682 035.

BY ADV P.G.JAYASHANKAR

RESPONDENTS/PETITIONERS IN OP(MV) AND RESPONDENTS 1 AND 2 IN OP(MV):

1 SADANANDAN
AGED 62 YEARS
S/O.KRISHNAN, PADIKKAL, ERAMALLOOR P.O.,
EZHUPUNNA, ALAPPUZHA - 688 537.

2 SOUMYA
AGED 33 YEARS
W/O.SUJEESH, KAITHAKUZHY, NADUVATH NAGAR P.O.,
PANAVALLY, CHERTHALA - 688 526.

3 REMYA P.S.
AGED 30 YEARS
W/O.SUBEESH KUMAR, AZHAKANTHARA VELI, AROOR P.O.,
ALAPPUZHA - 688 534.

4 THE MANAGING DIRECTOR
K.S.R.T.C., FORT P.O., TRIVANDRUM - 695 023.

5 ANEESH MANIKANDAN P.C.
S/O.CHITHRA BANU P.K, H.NO.805A, PALLIPARAMBIL HOUSE, CHATIATH, PACHALAM P.O., KOCHI - 682 012.

BY ADVS.
ANIL S.RAJ
SRI.P.C.CHACKO(PARATHANAM) FOR R4
K.N.RAJANI FOR R1 TO R3
RADHIKA RAJASEKHARAN P.
ANILA PETER
ALEX ANTONY SEBASTIAN P.A.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 07.04.2025, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

EASWARAN S., J.

MACA No.954 of 2021

Dated this the 11th day of April, 2025

JUDGMENT

This appeal is preferred by the Insurance Company aggrieved by the award passed by the Addl.Motor Accidents Claims Tribunal, Ernakulam in OP(MV) No.1344/2018.

2. The brief facts necessary for the disposal of the appeal are as follows:

The claimants are the legal heirs of one Remani, who died in a road traffic accident on 21.4.2018 at 5 pm. While she was crossing Alappuzha-Ernakulam NH Zebra line, a KSRTC bus bearing registration No.KL-15/7317 hit on the scooter. Due to the impact of the accident, the deceased fell down and sustained fatal injuries. Though she was taken to Lakeshore Hospital, Nettoor, she succumbed to the injuries on the same day.

3. The claimants contended that the deceased was a cook in a hotel and was earning a sum of Rs.18,000/- per month. In support of their contention, the claimants produced Exts.A1 to A3 documents.

The tribunal, on appreciation of evidence, found that the deceased Remani had to be treated as a skilled worker and, therefore, proceeded to fix her notional income at Rs.13,500/- per month. Since the deceased was survived by three dependants, 1/3rd of her income was deducted towards personal and living expenses. The tribunal, in addition to the above, granted loss of estate and loss of consortium to the 1st claimant and also Rs.40,000/- each under the head love and affection to the claimants 2 and 3. Thus, the tribunal awarded the following compensation:

Sl. No.	Head of claim	Amount Claimed (Rs.)	Amount Awarded (Rs.)	Basis Vital details in a nut shell
1	Parental consortium	Nil	80000	2x40000 (2nd and 3rd petitioner)
2	Loss of estate	50000	15000	
3	Transport to hospital	10000	10000	
4	Compensation for love and affection	100000	80000	2x40000 (P2 and P3
5	Funeral expenses	25000	15000	
6	Treatment expenses	20000	Nil	
7	Compensation for loss of dependency	2000000	1306800	
8	Compensation for pain and sufferings	50000	Nil	
9	Loss of consortium	50000	40000	1st petitioner
10	Mental shock and agony	30000	Nil	
	Total Claim is limited to Rs.23,00,000/-	**23,35,000**	**15,46,800**	

4. Challenging the quantum of compensation awarded by the tribunal, the insurance company has preferred the present appeal by contending that the notional income adopted by the tribunal is without any rationale and against the principles laid down by the Supreme Court in **Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Ltd. (2011 (13) SCC 236)**. The insurance company further contended that the tribunal erred egregiously in granting compensation under the head love and affection in addition to the parental consortium granted to the 2nd and 3rd claimants.

5. Heard Sri.P.G.Jayashankar, the learned counsel appearing for the appellant-insurance company, and Smt.K.N.Rajani, the learned counsel appearing for the claimants.

6. On consideration of the rival submissions raised across the bar, this Court is of the considered view that the appeal preferred by the insurance company can only be allowed partly. From the facts narrated above, it is evident that the insurance company questions the quantum of compensation basically on two heads; (a) fixation of notional income, and (b) grant of compensation towards love and affection over and above the compensation granted under the head

loss of consortium. Although it is contended that claimants 2 and 3 cannot be considered dependents, this Court is of the view that in the light of the decision of the Supreme Court in **National Insurance Company Ltd.** v. **Birender and Others [(2020) 11 SCC 356]** and this Court in **United India Insurance Co. Ltd. v. Shalumol [2021 (5) KLT 74],** the contention of the insurance company questioning the dependency of claimants 2 and 3 cannot be sustained.

7. As regards the claim that the income fixed by the tribunal is on the higher side, it must be noted by this Court that the accident took place in the year 2018. Therefore, prima facie, this Court is of the view that the income fixed by the tribunal is not proper in terms of the notification issued by the State of Kerala under the provisions of the Minimum Wages Act.

8. In **Angad Tiwari & Anr** v. **National Insurance Company Ltd. (Civil Appeal 10950 of 2024 decided on 1.10.2024 : 2024 KHC 8590)**, the Supreme Court held that while fixing the income of the deceased/claimant, the tribunals or courts shall not fix the same below that of the minimum wage.

9. In G.O.(P) No.56/2017/Fin dated 28.4.2017, the State of Kerala has fixed the minimum wage and going by the said notification,

it is seen that for a coolie worker, an amount of Rs.17,325/- is fixed as the minimum wage.

10. However, the learned counsel appearing for the appellant-insurance company placed extensive reliance on GO(P) No.196/2016/LBR dated 21.12.2016 pertaining to the revised minimum wage in shops and commercial establishments in the State of Kerala and going by the same, according to the learned counsel, the minimum wage is only around Rs.10,000/-.

11. In the considered view of this Court, there are glaring infirmities in the submissions of the learned counsel for the insurance company. It must be noted that the notification relied on by the learned counsel for the insurance company is of the year 2016, whereas the Government has revised the notification during the year 2017, that is to say, with effect from 1.4.2017. Going by the averments in the claim petition, the claimants have sought the income of deceased Remani to be fixed at Rs.18,000/-. Therefore, this Court will have to balance the case as projected by the claimants as well as by the insurance company. Admittedly, the State Government has not come up with a notification pertaining to the fixation of minimum wage in respect of the shops and commercial establishments for the

relevant year. But, that by itself will not deter this Court from fixing suitable notional income based on the available notification issued by the State of Kerala under the provisions of the Minimum Wages Act, 1948. Admittedly, the wages fixed for the year 2016 cannot be form the basis of determination of the notional income. The claimants are in a disadvantageous position inasmuch as the Government did not deem fit to revise the minimum wage for persons who are employed in shops and commercial establishments after 2016. But at the same time, it has gone ahead and revised the minimum wage under other unorganized sectors. Therefore, this Court is of the view that while fixing the notional income in such circumstances a more reasonable and realistic approach has to be taken.

12. In **Sanjay Kumar Vs Ashok Kumar & ors [(2014)5 SCC 330]**, the Supreme Court held that even in the absence of any documentary evidence regarding the proof of income, if the claim appears to be reasonable based on the ground realities, the tribunal can fix the income as claimed by the petitioner in the claim petition.

13. The broad principle governing the fixation of the notional income being stated as above, this Court has to consider the issue as to whether in an appeal preferred by the insurance company, the

compensation liable to be paid to the claimants can be enhanced. This question is no longer *res integra*, in view of the decision of this Court in **Reliance General Insurance v. Bindu & Others [MACA No.1946/2021 decided on 19.12.2024 : 2025 KHC 228]**. Therefore, this Court is of the view that, in the interest of justice, the income of deceased Remani has to be refixed by exercising the power under Order-XLI Rule-33 of the Code of Civil Procedure, 1908. Accordingly, while finding the question of fixation of income against the insurance company, this Court, in the exercise of its powers under Order-XLI Rule-33, refix the income of deceased Remani at Rs.18,000/- per month.

14. Next, it is contended by Sri.P.G.Jayashankar, the learned counsel appearing for the insurance company, that the tribunal could not have granted compensation under the head love and affection after granting the benefit under the head loss of consortium. On this point, this court finds considerable force in the argument of the learned counsel for the insurance company and therefore is of the view that the claimants are not entitled to dual benefit both under the head loss of consortium and loss of love and affection. Accordingly, the compensation granted under the head love and affection for the

2nd and 3rd claimants are liable to be deleted accordingly.

15. In the result, the appeal preferred by the insurance company is partly allowed. In exercise of its powers under Order-XLI Rule-33 CPC, this Court fixed the notional income of deceased Remani at Rs.18,000/- and granting 10% future prospects, the income of the deceased Remani would be Rs.19,800/- per month. The loss of dependency is thus recalculated as follows:

19,800x12x11x2/3 = 17,42,400-13,06,800

= Rs.4,35,600

The amount of Rs.80,000/- granted under the head love and affection is to be deleted, and thus, the amount so arrived will be Rs.3,55,600/-. The insurance company is directed to deposit a further sum of Rs.3,55,600/- together with interest @ 8% per annum from the date of petition till realisation. The claimants will also be entitled to proportionate costs, in tune with the enhancement so granted by this Court.

Ordered accordingly.

Sd/-
EASWARAN S.
JUDGE

Jg

APPENDIX OF MACA 954/2021

PETITIONER ANNEXURES

Minimum Wage Notification	**Relevant excerpts of Notification bearing No. G.O(P) No. 196/2016/LBR dated 21.12.2016 pertaining to the revised minimum rates of wages in Shops and Commercial Establishments in the State of Kerala**