2025:KER:22416

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 7TH DAY OF MARCH 2025 / 16TH PHALGUNA, 1946

MACA NO. 1391 OF 2017

AGAINST THE AWARD DATED 18.08.2016 IN OPMV NO.313 OF 2008 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA

APPELLANTS/PETITIONERS :-

1 MARIAMMA
CHETTIVELLIYAKATHU HOUSE, PALLITHODU VADAKKUM MURI,KUTHIYATHODU.

2 ANTONY
CHETTIVELLIYAKATHU HOUSE, PALLITHODU VADAKKUM MURI,KUTHIYATHODU.

3 PHILOMINA
CHETTIVELLIYAKATHU HOUSE, PALLITHODU VADAKKUM MURI,KUTHIYATHODU.

4 DOLLY
CHETTIVELLIYAKATHU HOUSE, PALLITHODU VADAKKUM MURI,KUTHIYATHODU.

5 MINIMOL
CHETTIVELLIYAKATHU HOUSE, PALLITHODU VADAKKUM MURI,KUTHIYATHODU.

6 REETHA
CHETTIVELLIYAKATHU HOUSE, PALLITHODU VADAKKUM MURI,KUTHIYATHODU.

BY ADVS.
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.P.J.JOE PAUL
SRI.MANU SEBASTIAN

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RESPONDENTS/RESPONDENTS :-

1 C.KUMAR
72, VADANATHAMPATTI,
VEERASINGAMANI.P.O.,SANKARANKOIL, NELLAI, TAMIL NADU.

2 JALEEL
BEST TRADING CO., EDAMUTTOM.P.O., THRISSUR.

3 UNITED INDIA INSURANCE CO. LTD.
REP. BY ITS BRANCH MANAGER,BRANCH OFFICE, KAYAMKULAM.

BY ADV S.JAYASREE
SRI.P.V.JYOTHI PRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 07.03.2025, ALONG WITH MACA.1386/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

The petitioners in O.P.(M.V.) No.313/2008 on the file of the Motor Accident Claims Tribunal, Mavelikkara are the appellants herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The O.P. was filed under under Section 166 of the Motor Vehicles Act, 1988, by the parents and siblings of the deceased by name Joseph, who died in a motor vehicle accident that occurred on 07.01.2008. According to them, 07.01.2008 at about 09.30 p.m., while the deceased was riding pillion on a motorcycle, a lorry bearing Registration No.KL-8AA-4166 driven by the 1st respondent in a rash and negligent manner, hit on the motorcycle and as a result of the accident, he along with the rider fell down and sustained serious injuries and succumbed to the injuries on the very same day.

3. The 2nd respondent is the owner and 3rd respondent is the insurer of the offending vehicle. According to the petitioners, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. was Rs.9,00,000/-.

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the oral testimonies of PWs 1 and 2 and documentary evidence Exts.A1 to A13.

6. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.6,87,000/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners preferred this appeal.

8. Now the point that arises for consideration is the following:

Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri.George Varghese, the learned Counsel appearing for the petitioners/appellants, and Sri.P.V.Jyothi Prasad, the learned Standing Counsel for the 3rd respondent.

10. The Point: In this case the accident as well as valid policy of the offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioners is regarding the income of the deceased as fixed by the Tribunal. According to him, the deceased was working as a wood carving works, earning Rs.6,000/- per month, but the Tribunal fixed his monthly income at Rs.3,000/-.The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. As per the dictum laid down by the Hon’ble Supreme Court in the

decision in ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.*** [2011 (13) SCC 236], the notional income of a coolie, during the year 2008 will come to Rs.6,500/-. Therefore, the learned counsel prayed for fixing the notional income of the petitioner at Rs.6,500/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable. Since the notional income of a coolie, in the year 2008 will come to Rs.6,500/-, in order to award just and reasonable compensation, in the light of a dictum laid down in the decision of the Hon'ble Supreme Court in **Ramachandrappa (supra)**, the notional income of the petitioner is liable to be fixed as that of a coolie, at Rs.6,500/-.

12. On the date of accident, the deceased was aged 21 years. Therefore, 40% of the monthly income is liable to be added towards future prospects, as held in the decision in **National Insurance Co.Ltd v Pranay Sethi** [(2017) 16 SCC 680] and the multiplier to be applied is 18, as held in **Sarla Verma v. Delhi Transport Corporation,** (2009) 6 SCC 121. Since the deceased was a bachelor who left behind 2 dependents, towards personal and living expense, 1/2 of the income is liable to be deducted, as held in **Sarla Verma** (supra). In the above circumstances, the loss of dependency will come to Rs.9,82,800/-

13. The Tribunal has awarded Rs.10,000/- towards loss of estate,

Rs.25,000/- towards funeral expenses and Rs.1,50,000/- towards love and affection. No amount was awarded towards loss of consortium In the light of the decision in **Pranay Sethi** (supra), the appellants are entitled to get a consolidated sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, and the dependents are entitled to get a sum of Rs.40,000/- each towards loss of consortium, with an increase of 10% in every three years. Therefore, towards loss of estate and funeral expense they are entitled to get a sum of Rs.18,150/- each. Towards loss of consortium, petitioners together are entitled to get a sum of Rs.96,800/- (48,400 x 2).

14. Since compensation for loss of consortium was given, further compensation for love and affection cannot be granted, in view of the decision in **New India Assurance Company Ltd. v. Somwati and Others,** (2020)9 SCC 644. Therefore, the compensation awarded towards love and affection is to be deducted.

15. Towards the head ‘pain and sufferings’, the Tribunal has awarded Rs.10,000, which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case on the date of the accident. In the above circumstances, I hold that the compensation awarded towards pain and suffering is on the lower side, and hence, it is enhanced to Rs.25,000/-

16. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

17. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.11,46,900/-, as modified and recalculated above and given in the table below, for easy reference:

Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
1	Funeral expenses, Medical expenses & Ambulance charge	25000	18,150
2	Transportation expenses & others	5000	5000
3	Damage to clothing, etc.	1000	1000
4	Pain and sufferings	10000	25,000
5	Loss of dependency	4,86,000	9,82,800
6	Loss of love and affection	1,50,000	Nil
7	Loss of estate	10,000	18150
8	Loss of consortium	Nil	96,800
	Total	**6,87,000**	**11,46,900**
	Enhanced to Rs.	**459900**	

18. In the result, this Appeal is allowed in part, and the 3rd respondent is directed to deposit a total sum of Rs.11,46,900/- (Rupees Eleven Lakh Forty Six Thousand Nine Hundred Only), less the amount already deposited, if any, along with interest at the rate ordered by the Tribunal, from the date of the

petition till realisation/deposit,, with proportionate costs, within a period of two months from today. (enhanced compensation will carry interest @8%).

On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioners, in the ratio fixed by the Tribunal, excluding court fee payable, if any, without delay, as per rules.

Sd/-

C. PRATHEEP KUMAR,
JUDGE

SMA