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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 5TH DAY OF FEBRUARY 2025 / 16TH MAGHA, 1946

MACA NO. 2095 OF 2016

AGAINST THE AWARD DATED 11.02.2014 IN OPMV NO.706 OF 2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

APPELLANT:

**UNITED INDIA INSURANCE CO. LTD
THALASSERY, REPRESENTED BY THE ASSISTANT MANAGER,
UNITED INDIA INSURANCE CO. LTD., REGIONAL OFFICE
ERNAKULAM, SARANYA, HOSPITAL ROAD, KOCHI-11.**

BY ADV SRI.S.ARUN RAJ-SC

RESPONDENTS:

1. **ANASUYA K A
W/O. SURENDRAN, KOLLIYIL HOUSE, KALLUVAYAL P.O.,
PADIYOOR,KALLIYAD VILLAGE, ULICKAL (VIA), PIN-670703.**

2. **SURAJ KUMAR K.S.
S/O. SURENDRAN, -DO- -DO-**

3. **SURJITH KUMAR K.S.
S/O. SURENDRAN, -DO- -DO-**

4. **APARNA SURENDRAN
D/O. SURENDRAN, -DO- -DO-
(RESPONDENTS 2 & 3 DECLARED MAJOR AS PER ORDERS IN IA NOS. 14/2014 AND 10/2014. 3RD RESPONDENT-MINOR IS REPRESENTED BY HER NEXT FRIEND AND GUARDIAN-MOTHER 1ST RESPONDENT).**

BY ADV SRI.C.P.PEETHAMBARAN

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THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

Dated this the 5th day of February, 2025

The 3rd respondent in O.P.(M.V.) No.706/ 2009, on the file of the Motor Accident Claims Tribunal, Thalassery, is the appellant 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 wife and children of the deceased by name Surendran, who died in a motor vehicle accident that occurred on 18.05.2009. According to them, on 18.05.2009, while the deceased was riding a motorcycle bearing Reg.No. KL-13 H/3280, a bus bearing Reg.No. KL-13K/4336 driven by 1st respondent in a rash and negligent manner, dashed against the vehicle of the deceased and as a result of which he sustained serious injuries and later on he succumbed to the injuries, on the same day while under treatment.

3. The 1st respondent is the driver, 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

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offending vehicle. The quantum of compensation claimed in the O.P. was Rs.10,00,000/-.

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 documentary evidence Exts.A1 to A9 were marked. No evidence was adduced by the respondents.

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.19,16,568/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the 3rd respondent 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.S. Arun Raj, the learned Standing counsel appearing for the Appellant/3rd respondent, and Sri.C.P Peethambaran, the learned counsel appearing for the respondents/claimants.

10. The Point: In this case the accident as well as valid policy of

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the offending vehicle are admitted.

11. One of the contentions raised by the learned counsel for the 3rd respondent is that, the income of the deceased fixed by the tribunal at Rs.14,752/- is on the higher side because the deceased was working as a teacher in a Government school. After his death the dependents will get family pension and therefore notional income fixed at Rs.14,752 would be an unjust enrichment to them. On the other hand, the learned counsel for the petitioners relying upon the decision of the Hon'ble Supreme Court in N. **Jaysree and Ors v. Cholamandalam MS Genral Insurance Company Ltd** [AIR 2021 SC 923], would argue that split multiplier cannot be applied in the case of death of a government servant. In the above decision in the case of death of an assistant professor, for computing the loss of dependency, the whole salary of the deceased was taken, in addition to future prospectus as per the decision in **Sarla Verma v. Delhi Transport Corporation,** (2009) 6 SCC 121. Therefore, there is no merit in the above argument advanced by the learned counsel for the 3rd respondent.

12. On the date of accident, the deceased was aged 53 years. Therefore, 15% of the monthly income is liable to be added towards future prospects, as held in the decision in **National Insurance Co.Ltd v Pranay**

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Sethi [(2017) 16 SCC 680] and the multiplier to be applied is 11, as held in **Sarla Verma v. Delhi Transport Corporation,** (2009) 6 SCC 121. Since the deceased was married who left behind four dependents, towards personal and living expense, 1/4 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.16,79,515/-.

13. The Tribunal has awarded Rs.25,000/- towards loss of estate, Rs.20,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.40,000/- towards love and affection. 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 (wife and children) 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.1,93,600/- (48,400 x4).

14. Since compensation for loss of consortium was given, further compensation for love and affection cannot be granted, in view of the

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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. Another contentions raised by the learned counsel for the 3rd respondent is that, towards pain and suffering the tribunal has awarded a sum of Rs.50,000/- which is on the higher side. Relying upon the decision of a Division Bench of this Court in **Jyni and others v. Raphel P.T and Others** [2016(2) KHC 870], he would argue that, towards pain and suffering, when the victim dies on the date of accident itself, Rs.5000 to 15,000 is the reasonable compensation. In the above decision the tribunal has awarded Rs.10,000/- towards pain and suffering and the prayer for enhancement was declined by the Division Bench. In the above decision there is no specific finding to the effect that compensation on the head pain and suffering cannot be awarded over and above Rs.15,000/-. In the instant case the accident was on 18.05.2009 and the deceased breathed his last breath on the same day. In the above circumstances Rs. 50,000/- awarded by the tribunal on the head pain and suffering is on the higher side and hence it is reduced 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

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reasonable.

17. Therefore, the petitioners/ appellants are entitled to get a total compensation of **Rs.19,36,415/-**, 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	Loss of dependency	1679568	16,79,515
2	Pain and suffering	50000	25,000
3	Loss of love and affection	40000	----
4	Loss of estate	25000	18150
5	Transportation/Ambulance	2,000	2000
6	Funeral expenses	20,000	18150
7	Loss of consortium	1,00,000	1,93,600/-
	Total	Rs.19,16,568	**Rs.19,36,415**
	Enhanced	Rs.19847/-	

18. In the result, this Appeal is disposed of directing the 3rd respondent to deposit a total sum of Rs.19,36,415/- (Rupees Nineteen lakhs thirty six thousand five hundred fifteen Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till realisation/deposit, within a period of two months from today.

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19. 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

vnk/-