



2025:KER:28894

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

MACA NO. 3297 OF 2015

OPMV NO.440 OF 2014 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,

KOZHIKODE

APPELLANT/2ND RESPONDENT

THE ORIENTAL INSURANCE CO. LTD.
KOZHIKODE, REPRESENTED BY ITS REGIONAL MANAGER,
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADVS.
SRI.GEORGE CHERIAN (SR.)
SMT.LATHA SUSAN CHERIAN
SMT.K.S.SANTHI

RESPONDENT/CLAIMANT

FATHIMA SUNHA U. (MINOR)
AGED 2 YEARS
D/O.MUHAMMED U, DATE OF BIRTH: 15.9.2011,
REPRESENTED BY FATHER MUHAMMED, S/O.ABOOBACKER,
UCHAKAVIL HOUSE, P.O.PANNIKODE, MUKKAM VIA,
KOZHIKODE. PIN-673 602.

BY ADVS.
SRI.K.M.JAMALUDHEEN
SRI.SHRIKUMAR G (Sr.)
SMT.LATHA PRABHAKARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 10.3.2025, THE COURT ON 4.4.2025 DELIVERED THE
FOLLOWING:



JUDGMENT

Dated : 4th April, 2025

The 2nd respondent in OP(MV).440/2014 on the file of the Motor Accidents Claims Tribunal, Kozhikode, is the appellant. For the purpose of convenience, the parties are referred to as per their rank before the Tribunal.

2. The petitioner was a two year old child represented by her mother. According to the petitioner on 17.10.2013 at about 7.25 p.m, while the minor along with her mother was travelling in a motor cycle, a bus bearing registration No.KL10-Z-7375 driven by the 1st respondent in a rash and negligent manner hit against the motor cycle and as a result of which the child sustained injuries.

3. In the accident the child sustained degloving injury on the right eyebrow exposing the under lying tissue which has resulted in disfigurement. The 1st respondent is the insured and the 2nd respondent is the insurer of the bus.

4. One of the arguments advanced by the learned counsel for the appellant/2nd respondent is that though in the accident the minor child sustained only minor injuries, the Tribunal has awarded a compensation of Rs.17,65,000/- and major portion of the same is for providing the service of a Care taker to the child till she attains majority. According to the learned counsel, the compensation awarded by the Tribunal is too much on the higher side. On the other hand, the learned counsel for the petitioner supported the Award of the Tribunal.

5. In this case, the minor child has sustained only minor injuries.. No disability certificate has been produced by the petitioner. As argued by the learned counsel for the appellant as per the decision of the Hon'ble Supreme Court in **Master Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Anr., 2014 (14)**



SCC, 396, the compensation payable to the child towards non pecuniary heads is only Rs.1,00,000/- as the disability suffered by the victim is less than 10%. In addition to the same, the Tribunal has awarded a sum of Rs.2000/- towards transport to hospital, Rs.5000/- towards pain and suffering, Rs.3,00,000/- towards loss of motherly care, Rs.30,000/- towards disfigurement and Rs.14,28,000/- towards expenses for a Care taker.

6. In this case, the minor child is represented by its mother who sustained very serious injuries in the very same accident. The claim petition filed by the mother namely, OP 444/2014 was also tried by the Tribunal jointly along with the present OP. In the claim petition filed by the mother, the Tribunal found that she sufferer 100% functional disability and has awarded the expenses of a bystander as she could not even move without the assistance of a bystander. It was in the above context that the Tribunal holding that the child lost the service of its mother, awarded a sum of Rs.14,28,000/- towards expenses for providing a Care taker. Since in the accident, the minor child sustained only minor injuries, I hold that the Tribunal was not justified in awarding a sum of Rs.14,28,000/- to the child towards the expenses of a Care taker. It is true that in the accident, the mother of the child is seriously injured and is completely bedridden. As per the decision in **Master Mallikarjun** (supra), the compensation payable on all pecuniary heads, for victims who suffered disability upto 10% is only Rs.1,00,000/-, and hence the compensation awarded by the Tribunal on the head 'loss of motherly care' is also not permissible. At the same time, for the parents of the child for their sufferings in looking after the child, a sum of Rs.25,000/- is awarded as similar amount was awarded by the Apex Court in the decision in **Master Mallikarjun**. At the same time, Rs.5000/- awarded on the head pain and suffering is liable to be deducted. Since the child suffered disfigurement, Rs.30,000.- awarded for dis-figuration is retained. In



short, the total compensation payable to the petitioner is Rs.1,32,000/- (1,00,000 + 30,000 + 2000), as shown in the table given below

Heads	Amount awarded by the Tribunal	Amount given in Appeal
Transport to hospital	2000	2000
Pain and sufferings	5000	nil
Loss of motherly care	300000	Nil
Disfigurement due to the scar on the Rt.Eyebrow	30000	30000
Expenses for care taker till attainment of the age of majority	1428000	Nil
For the sufferings of the parents in looking after the child	Nil	25000
Disability	Nil	100000
Total	1765000	1,57,000
Amount reduced	16,08,000/-	

7. In the result, this Appeal is allowed. The compensation payable to the petitioner is reduced to Rs.1,57,000/-. The 2nd respondent is directed to deposit Rs.1,57,000/- along with interest at the rate ordered by the Tribunal, from the date of the petition till deposit/realisation, within a period of two months from today.

On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioner, excluding court fee payable, if any, without delay, as per rules.

Sd/-

C.Pratheep Kumar, Judge