2025:KER:22230

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 14TH DAY OF MARCH 2025 / 23RD PHALGUNA, 1946

MACA NO. 2288 OF 2014

AGAINST THE AWARD DATED 13.06.2014 IN OPMV NO.234 OF 2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA

APPELLANTS/ADDITINAL APPLICANTS 2 TO 4:

1 RADHA
AGED 54 YEARS
W/O.LATE KRISHNANKUTTY, RADHA MANDIRAM,
MELEVILAKOM, KANJIRAMKULAM, NEYYATTINKARA,
THIRUVANANTHAPURAM DISTRICT

2 LEGI
AGED 33 YEARS, S/O.LATE KRISHNANKUTTY,
RADHA MANDIRAM,MELEVILAKOM, KANJIRAMKULAM,
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT

3 SHEEJA
AGED 31 YEARS, D/O.LATE KRISHNANKUTTY,
RADHA MANDIRAM,MELEVILAKOM, KANJIRAMKULAM,
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT

BY ADVS.
SRI.R.NIKHIL
SRI.P.ABDUL RAZAK
SRI.BINU PAUL NETTOOR

RESPONDENT/S:

1 P.M VARGHESE
S/O.P.K.MATHAI,PRADIYODATHU VEEDU,
PURAMATTOM PO, MALLAPPALLY,
THIRUVALLA, PATHANAMTHITTA 689 543.

2 PHILIP.A.P.
S/O.PHILIP KOSHY, ATTAYIL HOUSE,
PURAMATTOM PO,MALLAPPALLY,
THIRUVALLA, PATHANAMTHITTA 689 543.

3 THE MANAGER
ORIENTAL INSURANCE COMPANY LTD.,
THAKARAPARAMBU ROAD,
THIRUVANANTHAPURAM 695 001.

BY ADV P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 14.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dated this the 14th day of March, 2025

The additional petitioners 2 to 4 in O.P.(M.V.) No.234/2006 on the file of the Motor Accident Claims Tribunal, Neyyattinkara are the appellants herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The petitioner filed the above O.P. under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 20.1.2006. After the filing of O.P., he died on 12.09.2006, because of the injuries sustained in the accident. The additional petitioners 2 to 4 are his wife and children. According to the petitioners, on 20.1.2006 at about 6.30 a.m., while the deceased was standing by the side of the footpath, a Toyoto Qualis car bearing registration No.KL-3J-1207, driven by the 2nd respondent in a rash and negligent manner hit him down and as a result of which he sustained serious injuries and while under treatment, he succumbed to the injuries on 12.9.2006.

3. The 1st respondent is the owner, the 2nd respondent is the driver and 3rd respondent is the insurer of the offending vehicle. According to the petitioner, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. is Rs.5,00,000/-

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 testimony of PW1 and documentary evidence Exts.A1 to A16 and B1. No evidence was adduced by the respondents.

6. Though after the death of the original petitioner the claim petition was treated as a death case, the Tribunal found that there was no evidence to prove the cause of death of the original petitioner and as such proceeded to pass the impugned Award, as if it is an injury case.

7. From the Award itself, it is revealed that the deceased was treated as inpatient in Medical College Hospital Thiruvananthapuram on three occasions and he was treated as inpatient for a total period of

125 days. 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.1,33,660/- rounded to Rs.1,34,000/- and directed the insurer to pay the same.

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

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

1) *Whether the original petitioner died because of the injuries sustained in the accident?*

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

9. Heard Sri. R. Nikhil, the learned Counsel appearing for the petitioner/appellant, and Sri.P. Jacob Mathew, the learned Standing Counsel for the 3rd respondent.

10. <u>The Point:</u> In this case the accident as well as valid policy of the offending vehicle are admitted.

11. In the accident the petitioner sustained 'Type -III *B compound fracture both bones (L) leg with comminuted fracture lateral malleolus. Also*

there was fracture on (L) tempero parietal region." Emergency evacuation under general anesthesia was done on 20.1.2006 itself. He underwent external fixation application for fracture of both bone of (L) leg'.

12. Due to infection of both bones (L) leg, four times he was admitted in Medical College Hospital and twice he underwent surgery for fixing the fixator. After the last inpatient treatment he was discharged on 13.7.2006, as revealed from Exhibit A7. The death occurred on 12.9.2006. As per the impugned Award, the victim died while he was under treatment in the Medical College Hospital itself. Even then, the Tribunal held that since postmortem was not conducted, the cause of death was not proved and hence the prayer for taking it as a death case was rejected.

13. Since in the accident, the victim sustained very serious injuries and he was treated as inpatient in Medical College Hospital for a total period of 125 days in four sessions and he had undergone two surgeries and it is also revealed that there was infection on both fractured bones on his left leg and he died at the Medical College Hospital itself, while under treatment, I hold that the Tribunal was not

justified in holding that in this case there is no evidence to prove that the victim died because of the injuries sustained in the accident. In other words, I hold that the victim died because of the injuries sustained in the accident and as such the appellants are entitled to get the compensation on account of the death of the victim.

14. According to the petitioners, the deceased was a milk vendor, getting a monthly income of Rs.6,000/-. However the Tribunal fixed his notional income at Rs.4,000/-. 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 2006 will come to Rs.5500/-. Since the petitioners could not prove the job or income of the deceased, as claimed in the OP, in the light of the dictum laid down by the Hon'ble Supreme Court in **Ramachandrappa** (supra), his notional income is liable to be fixed as that of a coolie, at Rs.5500/-.

15. On the date of accident, the deceased was aged 48 years. Therefore, 25% 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

13, as held in **Sarla Verma v. Delhi Transport Corporation,** [(2009) 6 SCC 121]. Since the deceased was married who left behind 3 dependents, towards personal and living expense, 1/3 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.7,15,000/-

16. The tribunal has taken it as a case of injury and awarded a sum of Rs. 30,000/- each towards 'pain and suffering' and 'loss of amenities' and a sum of Rs.5,750/- was awarded on the head 'permanent disability' and no compensation was awarded on the heads 'loss of estate', 'funeral expenses' and 'loss of consortium'.

17. 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 (parents, children and spouse) 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.1,45,200/- (48400x3).

18. The deceased died in this case 8 months after the accident. Towards the head ‘pain and sufferings’, the Tribunal has awarded Rs.30,000/- 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.1,00,000/-.

19. Towards bystander expenses, the Tribunal has awarded Rs.12,200/-. Since the deceased was treated as inpatient for a period of 125 days and he died about eight months after the accident, I hold that the compensation awarded on the head bystander expenses is on the lower side and hence it is enhanced to Rs.25,000/-. Towards extra nourishment, the Tribunal has awarded only Rs.1,000/- and it is enhanced to Rs.10,000/-. Compensation towards 'transportation expenses' is enhanced to Rs.5,000/-.

20. Since it is a case of death, compensation awarded on the head 'loss of amenities will be deducted. Similarly, Rs.5,760/- given on the head 'loss of permanent disability' and Rs.32,000/- awarded on the head 'loss of earning' also will be deducted.

21. No change is required, in the amounts awarded on other

heads, as the compensation awarded on those heads appears to be just and reasonable.

22. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.10,58,200/-, 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 earnings	32,000/-	Nil
2	Transportation expenses	1,000/-	5,000/-
3	Extra nourishment	1,000/-	10,000/-
4	Damage to clothing	500/-	500/-
5	Medical expenses	21,200/-	21,200/-
6	Bystander's expenses	12,200/-	25,000/-
7	Pain and suffering	30,000/-	1,00,000/-
8	Loss of amenities	30,000/-	Nil
9	Permanent disability	5,760/-	Nil
10	Loss of estate	Nil	18,150/-
11	Funeral expenses	Nil	18,150/-
12	Loss of consortium	Nil	1,45,200/-
13	Loss of dependency	Nil	7,15,000/-
	Total	1,33,600 rounded to **1,34,000/-**	**10,58,200/-**
	Enhanced Rs.9,24,200/-		

23. In the result, this Appeal is allowed in part, and the 3rd respondent is directed to deposit a total sum of Rs.10,58,200/- (Rupees ten

lakh fifty eight thousand two 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%).

24. 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

sou.