

In The Court of Motor Accidents Claims Tribunal-IV/ Addl.District and Sessions Judge-V, Kozhikode

**Present:- Sri. Jennis Stephen, Motor Accidents Claims Tribunal-IV/
Addl.District and Sessions Judge-V, Kozhikode**

Friday the 08th day of May 2026/18th day of Vaishakham,1948

OP(MV) 1574/2020

Between:-

- 1 Sudhakaran.K, S/o Krishnakurup,
Aged 57 years Petitioner
- 2 Santha, W/o Sudhakaran,
aged 51 years
Both are residing at Narakasseri,
PO.Nanminda,Kozhikode-673613
- 3 Surya.S W/o Unnikrishnan,
aged 27 years, Residing at Pookkatt,
Chengottukavu, Kozhikode-673306

And:-

- 1 Manoj.K.P S/o Gopalan.K.P Respondents
Age not known
Residing at Kodappaniyil House
P.O Cheekkilode, Koduvally,
Kozhikode-673572
(Owner of the Lorry bearing
Reg.No: KL-59-G-7331)
- 2 Sukesh S/o Sundharan
Aged 31 years
Residing at Madathil House
P.O.Chooloor,REC
Kozhikode-673571
(Rider of the Lorry bearing
Reg.No.KL-59-G-7331)
- 3 The Oriental Insurance Company Limited
DO:1,Seema Building, GH Road
Opp.Kottaparamba Hospital,
Kozhikode-673001
(Insurer of the Lorry bearing
Reg.No.KL-59-G-7331)

This petition is coming on this the 04th day of May 2026 for final hearing before me in the presence of Smt. Babu P Benedict & Sri. Sabin Babu Advocates for petitioner and 1st & 2nd Respondent set exparte and Smt. T G Meena Nair Advocate for 3rd Respondent and having stood over to this day for consideration the court passed the following:

AWARD

The above application is filed under section 166 of the Motor Vehicles Act (hereinafter referred to as 'the MV Act' for short), 1988, claiming compensation by the petitioners for the death of the deceased Sooraj S, who died in a road traffic accident.

2. The case of the petitioners, as stated, in the petition in brief, is as follows:- Petitioner No. 1 is the father, Petitioner No. 2 is the mother and Petitioner No.3 is the sister of deceased Sooraj, who died in a road traffic accident which took place on 06.06.2018 at about 5.10 p.m. According to the petitioners, while the deceased was riding a motorcycle bearing registration No. KL-11-AW -5160 from Nanmanda to Punnassery, and when reached at Koolipoyil, Nanmanda, collided with a lorry bearing registration No. KL-59 G -7331, which was driven by the 2nd respondent in a rash and negligent manner in over speed, came in the opposite direction, and as a result, the deceased was thrown out and fell down on the road and sustained serious injuries. Immediately, the injured was taken to Medical

College Hospital, Kozhikode, but died on the same day at the hospital due to injuries sustained to his chest and head. According to the petitioners, the accident occurred due to the rash and negligent driving of the respondent No. 2, the driver of the lorry. Respondent No.1 being the owner, 2 being the driver and respondent No.3 being the insurer of the offending lorry bearing registration No. KL-59 G - 7331 are jointly and severally liable to pay compensation to the petitioners.

3. Notice was issued to respondent Nos. 1 to 3. Despite the receipt of notice, respondent No.1 and 2 did not appear before the Tribunal and they were set *exparte*.

4. Respondent No.3, the Insurer, filed a written statement admitting that the lorry bearing registration No. KL-59 G -7331 was validly insured with the respondent. It is submitted by the 3rd respondent that the accident took place due to the negligence of the deceased, rider of the motorcycle. It is also contended that the investigating officer has filed a charge sheet against the deceased, invoked section 279 of IPC against the deceased, revoking the charges against Respondent No.2. Therefore, this may be considered as a case of non-liability. It is further contended that the respondent No.2, driver of the lorry, has no valid driving licence on the date of the accident and hence this respondent is not liable to indemnify respondent No.1. Respondent No.3 disputed the age, occupation, income etc., of the deceased as stated in the petition. It is also contended by the 3rd respondent that the amount claimed by the petitioners is highly excessive. Hence, the OP is liable to be dismissed.

5. On the basis of the above pleadings, the following issues are drafted for consideration:

1. Was the accident caused due to the negligence on the part of the 2nd Respondent as alleged?
2. Did the deceased die due to the injuries sustained in the accident ?
3. Are the petitioners entitled to get compensation, and if so, who is liable to pay the same ?
4. What is the quantum of compensation entitled by the petitioners ?
5. Reliefs and costs ?

6. In order to prove the case of the petitioners, PW1 to PW3 were examined. Exts.A1 to A6 were marked on the side of the petitioners. RW1 was examined on the side of the respondent No. 3. Exts.B1 to B4 were marked on the side of the 3rd respondent.

7. **Issue Nos.1 :-** To prove the negligence of the respondent No.2, the petitioners relied on Ext.A1 FIR. PW1 to PW3 were also examined on the side of the petitioner. To prove the negligence of the deceased, the respondent No. 3 relied on Ext.B3 final report. RW1 was examined on the side of the third respondent.

8. In *New India Assurance Company Ltd. v. Pazhaniammal and Others* 2011 (3) KHC 595 a Division Bench of the Hon'ble High Court held that,

as a general rule it can safely be accepted that production of the police charge sheet is *prima facie* sufficient evidence of negligence for the purpose of a claim under S.166 of the Motor Vehicles Act. If any one of the parties does not accept such a charge sheet, the burden must be on such party to adduce oral evidence. If oral evidence is adduced by any party in a case where a charge sheet is filed, the Tribunal should give further opportunity to others also to adduce oral evidence, and in such a case, the charge sheet will pale into insignificance, and the dispute will have to be decided on the basis of the evidence. In all other cases, such charge sheet can be reckoned as sufficient evidence of negligence in a claim under S.166 of the Motor Vehicles [Act. In](#) the instant case, both parties have adduced evidence.

9. In ***Mani.V.R vs. Binoy Varghese and another [2022(2) KHC 83]***, the Hon'ble High Court of Kerala held,

“It is true that in cases involving negligence and contributory negligence, normally police charge will be given emphasis to hold so, if no contra- evidence is forthcoming. But there is no hard and fast rule that the police charge is the final word in deciding negligence or contributory negligence. To put it otherwise, when substantive evidence otherwise is available, the same should have predominance over the police charge.”

10. In ***Kolavan and others vs. Saleem and others [2018 KHC 77]***, a division bench of the Hon'ble High Court of Kerala, after considering the dictum laid down in ***Pazhaniammal (supra)*** held,

“Once the charge sheet is filed, the Tribunal will not be justified in finding negligence, contrary to the finding in the

charge sheet, merely relying on the scene mahazar prepared in the case, in the absence of any evidence against the finding in the charge sheet. If there is any suspicion with regard to the charge sheet filed by the police after completing the investigation, the party should be afforded an opportunity to adduce oral evidence of accident and alleged negligence. In such case, issue of negligence must be decided on other evidence, ignoring the charge sheet.”

11. Going by the decision in **Kolavan (supra)**, it can be held that when the parties adduce reliable evidence against the final report, the findings in the final report has to be ignored. In the instant case, both the parties have adduced evidence on the point of negligence and when the contrary evidence is adduced, this Court is duty bound to consider the same. It is also consistently held by the courts that the standard of proof for proving negligence in MACT is not as high as in a criminal case.

12. Ext.B3 final report would show that, on 06.06.2018, while the deceased was riding motorcycle bearing registration No. KL-11-AW-5160 from Nanmanda to Punnassery and when reached at Koolipoyil, Nanmanda, due to rash and negligent riding of the deceased Sooraj, the motorcycle was hit against a lorry and as a result, the deceased hit bumper of the lorry bearing registration No. KL-59 G -7331 driven by the 2nd respondent and the deceased Sooraj succumbed to injuries at the Medical College hospital on the same day. Ext.B3 would further show that the deceased has also been charged for offences punishable under section 279 of the Indian Penal Code.

13. PW1 is a witness in the case diary. He denied having seen the accident. He deposed that he had not seen the accident which happened on 6-6-2018. He deposed that he had just signed the document prepared by the police. PW2 is the first petitioner who is the father of the deceased. He deposed that his son was working as a lift technician in the Gulf and earned ₹48,000/- per month. However, he did not produce any documents to prove the income. PW3 was also a witness in the case diary. He deposed that the lorry was coming at overspeed and the accident happened while the lorry was overtaking a car. Based on the evidence of PW1 and PW3, the counsel for the petitioner would argue that the negligence which resulted in the accident was on the side of the second respondent.

14. The counsel for the third respondent would argue that the Police conducted a detailed investigation and filed a charge sheet arraying the deceased as accused, charging Section 279 of IPC. This shows that the deceased was negligent and since no charge was laid against the second respondent, it was evident that the second respondent was not negligent. It is further argued that the road lies east - west and the southern side of the lorry is the correct side. The motor bike was coming from the northern side. The place of occurrence is shown as 0.25 meters towards southern from the centre line. This shows that the lorry was on the correct side. It is further argued that the lorry hit the motorcycle while overtaking a car is an entirely new case, which was not at all there. The only available evidence to rebut the charge is that of PW3, and his evidence is not believable, as it is contrary to the scene mahazar. The version of PW3 that the lorry was on the margin on the

northern side is contrary to the scene mahazar. RW1, Investigating Officer, also deposed that his investigation did not reveal the involvement of any car in the accident. Therefore, it is argued that there was no negligence on the side of the second respondent, and the entire negligence was on the side of the deceased.

15. The evidence of PW1 and PW3 is to the effect that there was negligence on the petitioner's part. Even though PW3 was cross-examined, there was no specific cross-examination regarding his statement that the accident occurred while the lorry was overtaking the car. In such circumstances, I am of the opinion that the petitioner has proved that there was negligence on the part of the second respondent. However, the entire negligence can not be put on the second respondent, as the charge sheet was laid against the deceased alone. The evidence adduced by the petitioners is not sufficient to discard the entire findings in the charge sheet. Considering the averments in the final report, I hold that the deceased was also negligent, and there was contributory negligence on the side of the deceased. On going through the scene mahazar and the evidence of the petitioners and the scene mahazar I am of the opinion that the higher degree of negligence was on the deceased. Considering the circumstances of the case, I fix the extent of negligence of the deceased as 60% and the second respondent at 40%.

16. **Issue No.2:-** Ext.A3 post mortem certificate issued by Department of Forensic Medicine, Govt. Medical College Hospital, Kozhikode dated 07.06.2018 would show that the alleged cause of death of the deceased by name Sooraj S was

died due to injury sustained to head and chest . In the above circumstances, I hold that the deceased died due to the injuries sustained in the road traffic accident that occurred on 06.06.218. This issue is found in favour of the petitioners.

17. **Issue No.3:-** According to the petitioners, they are legal heirs/dependents of the deceased. In order to prove the relationship of the petitioners with the deceased Sooraj, the petitioners produced the Ext.A4 Family Membership Certificate issued by the Village Officer, Nanminda Village Office. Ext.A4 shows that petitioners 1 to 3, Sudhakaran, who is the father, Santha, who is the mother and Soorya, who is the sister of the deceased Sooraj, are the legal heirs of the deceased Sooraj. No dispute has been raised regarding the dependency of the petitioners on the deceased. Hence, I hold that the petitioners are dependents on the deceased and are entitled to receive compensation for the death of the deceased.

18. As per the findings in issues No. 1 to 3, deceased Sooraj. S died due to the injuries caused in the accident due to the negligence of the deceased himself and the second respondent. Respondent No. 3 admitted that the lorry bearing registration No. KL-59 G -7331 involved in the accident, had a valid insurance policy at the time of the accident. Since the accident took place due to the negligence of the second respondent, also, respondent No.1, owner, respondent No.2, driver are liable to pay compensation to the petitioners at 40%. On the strength of the insurance policy respondent No.3 is liable to indemnify the compensation to be paid by respondent No.1 and 2. This issue is answered in favour of the petitioner.

19. **Issue No.4:-** Petitioners claimed ₹10,00,000/- under the head loss of future economic benefit. Petitioners claimed ₹30,00,000/- under the head of loss of dependency. The petitioner Nos. 1 to 3 are entitled to compensation for loss of dependency. In **Sarala Varma v. Delhi Transport Corporation [2010 (2) KLT 802]**, the Hon'ble Supreme Court laid down the basic facts to be established by the claimants for assessing compensation in case of death. The said facts are (1) Age of the deceased; (2) Income of the deceased and (3) Number of the dependents.

20. The petitioners produced Ext.A6, certified copy of the S S L C first page of the deceased to prove his age. In Ext.A6, the date of birth of the deceased is shown as 04.06.1990. The deceased died on 06.06.2018. Therefore I hold that the deceased was aged 28 years on the date of his death. The multiplier to be applied for the age of 28 as per the decision in Sarala Varma's case referred to above is 17.

21. According to the petitioners, at the time of the accident, the deceased was working as a lift technician abroad and was earning ₹48,000/- per month. PW2, the father of the deceased, deposed that the deceased was working as a lift technician in the Gulf and earning ₹48,000/- per month. However, no document has been produced to prove the said income. If the petitioner was working in the Gulf, there would necessarily have been documents for the same. However, as mentioned above, when the petitioner has adduced evidence, it cannot be discarded

in toto. Considering the evidence of PW2 and the lack of evidence from the side of respondents, it can be concluded that the deceased was earning more than notional income. During the year 2018, the notional income of ₹4,500/- per month with proportionate increment from the year 2004 as held in **Ramachandrappa V. Manager Royal Sundaram Alliance Insurance Company Limited** reported in **(2011) 13 SCC 236** will come to ₹11,500/-. I am fixing an amount of **₹14,000/-** as the income of the deceased, for the purpose of calculating the loss of dependency. Since the deceased was aged 28 years at the time of death, future prospects @ 25% also has to be calculated. The monthly income of the deceased is **₹17,500/-** (14,000+3,500).

22. The next aspect to be considered is as to the deduction towards personal and living expenses of the deceased. The deceased was having mother, father and one sister. Therefore, following decision in Sarala Varma's case referred to above, 1/3 portion of the income of the deceased has to be deducted towards the personal and living expenses of the deceased. After making the said deduction, the monthly income will come to ₹11,667/- (₹17,500 - ₹5,833/-), rounded to **₹11,670/-**. When the said amount is multiplied with the multiplier of 17, the compensation amount will come to **₹23,80,680/-** (11,670x17x12). That is the amount of compensation due to the petitioners on account of loss of dependency.

23. The petitioners claimed ₹5,000/- towards transportation charges. Transportation charges have been incurred for taking the deceased to hospital and

also when his body was brought back home. I am inclined to allow ₹2,000/- under the head of transportation charges.

24. Under the head of damage to clothing and articles, the petitioners have claimed ₹5,000/- and I am inclined to allow ₹1,500/- under the said head.

25. Petitioners claimed ₹5,00,000/- towards loss of estate, ₹1,00,000/- for funeral expenses and ₹5,00,000/- for loss of consortium. As per the decision rendered by the Hon'ble Supreme Court in **National Insurance Company Limited V. Pranay Sethi and Others reported in (2017 ICO 1936)**, in road accident death cases, reasonable amount on conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.40,000/- and Rs.15,000/- respectively and the aforesaid amounts should be enhanced at the rate of 10% in every three years. The date of judgment by the constitutional bench of Supreme Court in **Pranay Sethi's Case was 31-10-2017**. So from 01-11-2023 onwards, for the conventional heads which has now been settled as per the Pranay Sethi's case (cited supra) the compensation for loss of estate and funeral expenses shall be ₹18,150/- each, consortium to be awarded to petitioners shall be ₹48,400/- each. Hence, compensation for loss of estate and funeral expenses is awarded @ ₹18,150/- each and loss of consortium is awarded @ ₹48,400/- each to petitioner Nos. 1 to 3 towards filial consortium respectively.

26. The petitioners claimed ₹20,000/- towards expenses for English medicine. No documents are produced by the petitioners to prove the said claim. Therefore the claim is rejected.

27. Petitioners claimed ₹5,00,000/- under the head of loss of love and affection. In **United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur AIR 2020 SC 3076** the Hon'ble Apex Court held that when compensation is given under loss of consortium, there is no justification to award compensation towards loss of love and affection as separate head. Therefore, that claim is rejected.

28. Petitioners claimed Rs.1,00,000/- under the head of pain and suffering. In **Jyni Vs. Raphael.P.T and Others** reported in **2016(2) KHC 870** the Hon'ble High Court of Kerala held that in cases of instantaneous death as well as cases where the deceased was unconscious between the time of the accident and the time of his death, some notional amount is payable under the head of pain and suffering. It was also held that a slightly higher amount can be awarded under this head, if the death is not instantaneous. It was also held that a conventional amount in the range of Rs.5,000/- to Rs.15,000/- could be awarded under the head pain and suffering in such cases. In this case, the death was instantaneous. Considering these aspects, I am inclined to allow **₹60,000/-** under the head of pain and sufferings.

29. The petitioners claimed ₹5,00,000/- towards compensation for mental shock and agony to the petitioners. Since compensation has been granted for loss of consortium, the claim for compensation under this head is rejected.

30. The compensation claimed by the petitioners and the compensation payable to the petitioners 1 to 3 under different heads are summarised in the table below:

Sl. No.	Head of claim	Amount claimed ₹	Amount Awarded ₹	Basis-vital details in a nut shell
1	Transport to hospital	5,000/-	2,000/-	Reasonable expenses
2	Damage to clothing and articles	5,000/-	1,500/-	Reasonable expenses
3	English medicine	20,000/-	Nil	No documents produced
4	Funeral expenses	1,00,000/-	18,150/-	
5	Loss of love and affection	5,00,000/-	Nil	Since loss of consortium has been already granted
6	Loss of estate	5,00,000/-	18,150/-	
7	Loss of consortium	5,00,000/-	1,45,200/-	48,400/-x3 each
8	Compensation for pain and sufferings	1,00,000/-	60,000/-	
9	Compensation for loss of dependency	30,00,000/-	23,80,680/-	(11,670x17x12)
10	Loss of future economic benefit	10,00,000/-	Nil	Since loss of dependency already granted
11	Compensation for mental shock and agony	5,00,000/-	Nil	
	Total Claim limited: ₹ 60,00,000/-	₹62,30,000/-	₹26,25,680/-	

25. **Issue No.5:-** In view of the findings on issue Nos. 1 to 4, I hold that the petitioners 1 to 3 are entitled to get, 40% of total compensation amount of ₹26,25,680/-, an amount of ₹10,50,272/- rounded of to **₹10,50,275/-** (Rupees Ten lakh Fifty Thousand Two Hundred and Seventy Five only) with interest @ 8% per annum from the date of filing of the petition, till realization with proportionate costs and that the respondent No.3 being the insurer shall pay the amount within 30 days from the date of this award. Petitioners 1 to 3 are entitled to get the amount of compensation in the ratio of 40:40:20 respectively. Issue No.5 is answered accordingly.

In the result, in view of the findings on issue Nos. 1 to 4, the petition is allowed in part as follows:

1. The petitioners 1 to 3 are granted 40% of total compensation amount, for an amount of **₹10,50,275/-** (Rupees Ten lakh Fifty Thousand Two Hundred and Seventy Five only) with interest at the rate of 8% (Eight percentage) per annum from the date of petition (25.08.2020) till the date of deposit of the amount or till realisation.
2. The 1st petitioner and the 2nd petitioner, are granted compensation of 40% each and the 3rd petitioner is granted 20% of **₹10,50,275/-** with interest at the rate of 8% (Eight percentage) per annum from the date of petition (25.08.2020) till the date of deposit of the amount or till realisation.
3. Respondent No.3 shall furnish a cheque for **₹59,373/-** (Rupees Fifty Nine thousand three hundred and seventy three only) towards court fee

and ₹60,000/- (Rupees Sixty thousand only) towards Legal Benefit Fund payable in favour of M.A.C.T., Kozhikode.

4. Respondent No.3 shall deposit within 30 days by NEFT or RTGS or any other electronic mode 40% each of the balance amount directly to the Bank Account of the first petitioner bearing No. 40642101073845 at Kerala Gramin Bank, Nanminda branch, IFSC Code: KLGB0040642 and Account of the 2nd petitioner bearing No. 40642101062089 at Kerala Gramin Bank, Nanminda branch, IFSC Code: KLGB0040642. 20% of the balance amount directly to the Bank Account of the 3rd petitioner bearing No. 35764124564 at State Bank of India, Koyilandy branch, IFSC Code. SBIN0003338.
5. Respondent No.3 shall provide form 16 – A to the petitioners so as to enable them to seek refund of tax deducted at source.

(Dictated to the Confidential Assistant, typed by her directly to the computer, corrected and pronounced by me in the open Court, this the 8th day of May, 2026).

Sd/-

Addl. Motor Accidents Claims Tribunal-IV

Addl. District and Sessions Judge-V

Petitioner Witness:

PW1	17.03.2025	Moosa Koya, S/o. Hussain
PW2	23.06.2025	Sudhakaran, S/o. Krishna Kurupp
PW3	18.08.2025	Babu M P, S/o. Velibara

Petitioner Exhibits:

A1	06.06.2018	Copy of FIR in Crime No. 0273/2018 of Balussery Town P S, Kozhikode Rural
A2	06.06.2018	Copy of Accident Register -cum-Wound Certificate issued from Meitra Hospital, Kozhikode
A3	07.06.2018	Copy of Postmortem Report of Sooraj S issued from Govt. Medical College, Kozhikode
A4	14.11.2018	Copy of Surviving Family Membership Certificate of Sooraj S issued from Village Officer, Nanminda
A5		Copy of Aadhar Card of Sudhakaran bearing No. 6645 9448 1103 Copy of Aadhar Card of Santha bearing No. 8877 6844 9156 Copy of Aadhar Card of Surya S bearing No. ^{2142 0571 7446}
A6		Copy of SSLC Certificate of Sooraj S

Respondent No.1 & 2 Witness & Exhibits: Nil**Respondent No.3 Witness:**

RW1	02.02.2026	Sivadasan K S, S/o. Subramanian Nair
------------	------------	--------------------------------------

Respondent No.3 Exhibits:

B1	07.06.2018	Copy of Scene Mahazer in Crime No. 0273/2018 of Balussery Town P S, Kozhikode Rural
B2	07.10.2022	Copy of Case Diary in Crime No. 0273/2018 of Balussery Town P S, Kozhikode Rural
B3	30.07.2018	Copy of Final Report in Crime No. 0273/2018 of Balussery Town P S, Kozhikode Rural
B4	14.03.2018	Copy of Motor Certificate cum Policy Schedule CCCV Public Carriers other than Three Wheelers Package Policy Zone-C of Vehicle No. KL.59.G.7331

Court Witness / Expert Witness: Nil**Court Exhibits :** Nil

Sd/-

**Addl. Motor Accident Claims Tribunal IVth /
Addl.District and Sessions Judge-V**

PARTICULARS OF COST LIST**Petitioner's Cost in OP(MV)-1574/2020**

Sl No	Particulars	Amount allowed by court in Rs.	Remarks
1.	Stamps on Vakalath	6.00	
2.	Court Fee	59373.00	
3.	KLBF	60000.00	

4.	Stamps on Petition	20.00	
5.	Batta.	105.00	
6.	Stamps on Documents	8.00	
7.	Advocate fee	133684.00	
8.	Junior Advocate fee	66842.00	
9.	Clerical Charges	300.00	
	TOTAL	3,20,338.00	

Proportionate cost of ₹.1,40,184/- (One lakh Forty Thousand One Hundred and Eighty Four Rupees only) is allowed.

Sd/-

**ADDL. MOTOR ACCIDENTS CLAIMS TRIBUNAL-IV /
ADDL. DISTRICT & SESSIONS JUDGE-V**