

IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM

Present: Sri.Rajesh.R, MACT, Kollam

Thursday, the 14<sup>th</sup> day of May, 2026 /24<sup>th</sup> day of Vaisakha, 1948

**OP(MV) No. 1563/2020**

Between  
Petitioners:-

1. Brijit Antony, aged 50 years,  
W/o Antony, Abin Dale, Kulangarabhagom,  
Chavara P.O, Chavara Village,  
Karunagappally, Kollam -691583.
2. Abin Antony, aged 30 years,  
S/o.Antony, Abin Dale, Kulangarabhagom,  
Chavara P.O, Chavara Village,  
Karunagappally, Kollam -691583.
3. Biby Antony, aged 29 years,  
D/o.Antony, Abin Dale, Kulangarabhagom,  
Chavara P.O, Chavara Village,  
Karunagappally, Kollam -691583.
4. Sibin Antony, aged 23 years,  
S/o Antony, Abin Dale, Kulangarabhagom,  
Chavara P.O, Chavara Village,  
Karunagappally, Kollam -691583.
5. Jain, aged 62 years, W/o John,  
Abin Dale, Kulangarabhagom,  
Chavara P.O, Chavara Village,  
Karunagappally, Kollam -691583.

By Adv.: Sri.K.P. Jabbar & Smt.Ambili Jabbar.

And  
Respondents :

1. Sathya Rajan, S/o.Thankappan,  
Kadampanad Veedu, Puthenthurai P.O,  
Neendakara Village, Kollam-691583.
2. Arun Das, S/o.Yogeesaran,  
Arun Nivas, Neendakara P.O,  
Kollam-691583.
3. The Manager,  
United India Insurance Co.Ltd,  
Beach Rod, Kollam.

4. John, S/o.Antony, 290 Fair Villa,  
11 Kulangarabhagom, Chavara Village,  
Karunagappally, Kollam -691583.
5. The Manager,  
The National Insurance Co.Ltd,  
Bharanikavu Branch.

By Advs:Sri. S.Jayachandran for R3  
Sri. G.Amar Prasanth for R4  
Smt. V.Baby Geetha for R5  
(The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents remained exparte.)

This OP(MV) is coming on for hearing before me on 06-05-2026 and having stood over to 14-05-2026 for consideration, this Tribunal passed the following:-

### **AWARD**

Petition is filed by the dependents of Antony died in the relevant accident of this case, claiming compensation under Sections 140 & 166 of Motor Vehicles Act.

2. The petitioners are respectively the wife, three children and mother of late Antony.

3. According to the petitioners on 22/03/2017, at about 9.30 pm, while the deceased Antony, S/o. John aged 53 years was travelling as a pillion rider in the motorcycle bearing Reg.No. KL 23 C 8263 through the Kollam -Alappuzha NH, a Mahindra Bolero Maxi bearing Reg.No. KL 4 AC 6662, drove by the 2<sup>nd</sup> respondent, had recklessly and abruptly applied brake so as to turn towards west, which resulted in the unavoidable hit of the bike on the rear side of the Mahindra vehicle. Both the rider as well as pillion rider of the two wheeler fell on the road and sustained injuries. The pillion rider had succumbed to the injuries on 23/03/2017. Chavara police have registered crime No.989/2017 over the incident. The deceased was a worker in IRE Chavara earning ₹30,000/- per month during the period of accident. The applicants are the dependents of the deceased more specifically wife, three children and mother. The respondents are respectively the owner, driver and

insurer of the offending Mahindra Bolero vehicle and the remaining respondents 4 and 5 are the owner and insurer of the motorcycle bearing Reg.No.KL 23 C 8263 in which deceased had travelled. The dependents have lost their hope in life on account of the death of the householder. A compensation to the tune of ₹30,00,000/- have been sought for.

4. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents remained exparte.

5. The 3<sup>rd</sup> respondent has filed written statement which can be summarized as follows:-

The applicants are precluded from claiming compensation under law and they have not produced any document to prove that they are the legal heirs of he deceased. The allegation and narration about the accident has been so made to suit the claim of the applicants. It was not due to the negligence of the driver of the Mahindra vehicle but the negligence of the rider of the motorcycle the accident was occurred. Both the rider and pillion rider were under the influence of liquor and not even worn the protective head gears. The bike was so rode without caring proximity of vehicle plying through the said road and while the pickup van was trying to turn to western side after putting indicator, bike had dashed on the rear side of the pick up van. If the rider of the bike had shown some care and caution, the accident could have been avoided. Here the real tortfeasor is the rider of the bike. Since there was no negligence on the part of the 2<sup>nd</sup> respondent driver of pick up van, the 3<sup>rd</sup> respondent insurer is not liable to indemnify the insured. The 3<sup>rd</sup> respondent admit about the issuance of insurance policy in favour of the Mahindra Bolero vehicle. The applicants have to prove their claims as to the age, cause of death, occupation and income of the deceased. The amount of compensation claimed is highly exorbitant and it has no nexus with status of the deceased. The 3<sup>rd</sup> respondent has challenged and denied the averments of the applicants regarding their all claims.

6. The 5<sup>th</sup> respondent has filed written statement which can be summarized as follows:-

The claim petition is bad for non-joinder and mis-joinder of parties. The rider of the motorcycle bearing Reg.No. KL 23 C 8263 was not impleaded. The owner and insurer of the supra mentioned two wheeler has been unnecessarily included. The petitioner will have to prove the age, occupation, and income of the deceased. There is no evidence to prove that these petitioners are the legal heirs and dependents of the deceased. The compensation amount claimed through various heads are highly excessive. The 5<sup>th</sup> respondent had issued valid insurance coverage to the two wheeler bearing Reg.No. KL 23 C 8263. The rider of the bike did not have a valid driving licence at the time of accident. In the event of passing an award the interest over the same may be fixed in tune with the interest provided by the nationalized banks on term deposits.

7. PW1 was examined and Exts.A1 to A8, and X1 were marked from the side of the petitioners. RW1 and RW2 were examined and Ext.B1 was marked from the side of the respondents.

8. Heard both sides.

9. The points which arise for consideration are:

1. Did the accident occur on 22/03/2017 as alleged?
2. Had Sri.Antony succumbed to the injuries sustained in the accident?
3. Are the petitioners entitled to claim for compensation from these respondents? If so, what should be the quantum of award and from whom it has to be recovered?
4. Relief and costs?

10. **Issue No. 1**

From the Ext.A1, FIS and FIR convinced the Tribunal that the relevant incident was happened on 22/03/2017 and on 23/03/2017 at 5 pm, the injured Antony John was declared dead at the KIMS Hospital, Thiruvananthapuram, On 24/03/2017 the Chavara police have registered relevant Crime No.989/2017 over the incident.

11. Ext.A6 refer report of motor occurrence was filed by the investigating officer, thereby recording his conclusion about the incident. A perusal of the Ext.A6 refer report has convinced the Tribunal that on 22/03/2017, at 9.30 pm, while the deceased Antony John was travelling as a pillion rider in the bike bearing Reg.No. KL 23 C 8263 through the Alleppy – Kollam NH from north to south, it caused to hit on the rear side of a Mahindra Bolero pick up van bearing Reg.No. KL 4 AC 6662, at the materiel place of accident. It was found by the investigating officer that the said two wheeler had hit on the rear side of a stationed vehicle which was waiting to take a turn towards west, after putting indicator. The Ext.A4 postmortem report would clarify that the reason for the death was due to the injury sustained to the head and chest of the deceased. A reading of the charge sheet would give an impression that it was an unavoidable motor occurrence and if we put the blame of negligence it can be only on the rider of the bike.

12. It was in these circumstances applicants have examined PW1 who claims to have witnessed the accident. From Ext.A6 refer report it can be learned investigating officer had also enquired with this PW1 about the accident. According to PW1, it was due to the negligence of the driver of the auto-rickshaw has caused the accident. Here Mahindra Bolero Maxi is a mini truck having a definite appearance of a jeep in the front portion. The counsel for the 3<sup>rd</sup> respondent has also highlighted this aspect during final hearing by contenting that if PW1 had really witnessed the incident, he would not have stated the offending vehicle as an auto-rickshaw. The said contention of the 3<sup>rd</sup> respondent has some merit. PW1 has recorded in his chief that the abrupt turning of the auto-rickshaw towards west without giving indicator was the reason for the accident. He has further deposed before the Tribunal that the total width of the said NH was 20 metres. However in the cross examination, PW1 has also made clear that there was sufficient space on the said western half of the road leaving the pick up van for the movement of the bike. A keen study of the testimony of the PW1 has given the impression that based

on the sole evidence of PW1, it cannot be found that the applicants have probalised their version.

13. The investigation officer was examined as RW1 and he has deposed before the Tribunal about the actual preparation of scene mahazar and filing of refer report. It was reiterated by RW1, that when the van bearing Reg.No.KL 04 AC 6662 was stationed after putting indicator so as to turn towards west the bike followed said van hit on its rear side. Apart from challenging the finding of the investigating officer, that the applicants could not brought any conraindication from him so as to support their different probability. The insurer has further examined the RW2 the Regional Transport Officer who issued report on the vehicles involved in this case. It was on 30/03/2017, RW2 had physically examined the vehicles involved in this case as they were parked within the compound of the police station. RW2 has also clarified that he could noticed damage on the rear side of the pick up van and front side of the bike. RW2 came to the assumption that the bike had a heavy hit on the back of the van. Even though the owner and insurer of the two wheeler in which deceased travelled were made parties to the claim petition, there has not been any effort made by the applicants to prove the negligence or contributory negligence on the rider of the bike.

14. Counsel for 3<sup>rd</sup> respondent/insurer had filed IA 6/2025 to summon the owner of the bike bearing Reg.No. KL 23 C 8263 so as to and produce the driving licence of the rider Joseph John. Despite serving summons on him, the 4<sup>th</sup> respondent did not turn up before the Tribunal or produced the motor driving licence of the rider of the bike. It is the specific case of the 3<sup>rd</sup> respondent/insurer that the rider of the bike did not have a valid driving licence and it was due to his reckless riding without keeping reasonable distance with the vehicles moving ahead of him has led to the accident. Thus on appreciation of the available materials the contention of the applicants that the negligence of the 2<sup>nd</sup> respondent has caused the accident is not proved. As far as the contributory negligence of the 4<sup>th</sup> respondent is concerned,

there was no effort made to probalilise the same by the applicants. An over all study of the case records have given an impression that it could have been an unavoidable accident and some times there must have been an error in the judgment of the 4<sup>th</sup> respondent. In short the refer report remains with authority and applicants have miserably failed in their attempt to convert the same into a negligent act. Point No.1 has been answered accordingly.

15. Considering the facts and circumstances of this case, the dictum laid down by our High Court in **Oriental Insurance Company Ltd.V.Babu in 2022 (3) KLT On line 1053** can be considered. Hon'ble High Court have held that in a claim under Section 166 of Motor Vehicles Act proof of negligence is mandatory to canvas compensation from tortfeasors and indemnifier. It is the burden of the claimant to adduce evidence to satisfy the allegation of negligence attributed against the driver or rider of the vehicle involved in the accident. Since compensation is claimed based on the principle of fault liability independent substantive evidence mainly the evidence of eye witness, if adduced and if reliable will superceed the police charge. In the absence of such substantive evidence, negligence could not be found against the rider. However in this case applicants have not succeeded in superceeding the finding of its refer report.

16. Thus on appreciation of the available material the petitioners have not successfully probalilised the alleged negligence of the 2<sup>nd</sup> respondent. The refer charge sheet filed over the relevant incident as motor occurrence still holds good in law. So the point No.1 is found against the petitioners.

17. **Point No. 2 &3:**

As per Ext.A4, post-mortem certificate of the deceased the cause of death was due to the injuries sustained to head and chest. The petitioners' case is that they are the wife, children and mother of the deceased. The Ext.A5 Family membership certificate issued by the Chavara Village officer, would reveal that the petitioners 1 to 5 are the legal heirs and dependents of the deceased. Apparently and naturally

these petitioners are dependents of deceased and as such they are entitled to get compensation for loss of dependency.

18. The petitioners claim that deceased was a worker in IRE, Chavara, earning ₹30,000/- per month during the period of accident. However there is no evidence to prove the income of the deceased. So based on the facts narrated and on principles of natural justice, the monthly income of the deceased has been notionally fixed as ₹7,000/.

19. It is evident from Ext.A4 copy of postmortem certificate that the deceased was aged 61 years at the time of accident and in view of the decision reported in **Sarla Varma and others V. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** multiplier 7 is adopted for computing compensation for loss of dependency as the deceased was in the age group of 61-65 at the time of accident. Considering the number of dependants of the deceased at the time of accident was five deduction of  $\frac{1}{4}$  of the income of the deceased is reckoned for personal expenses. Since the deceased was 61 years old at the time of accident no notional income is added to the income of the deceased towards future prospects and compensation for loss of dependency is calculated as follows:

$$7000 \times 12 \times 7 \times \frac{3}{4} = ₹4,41,000/-.$$

20. It was held by the Hon'ble Supreme Court in **National Insurance Company V. Pranay Sethi and others [2017 (5) KHC 350]** that the dependents are entitled to receive ₹15,000/- towards loss of estate and ₹15,000/- towards funeral expenses and further that the compensation under those heads are to be increased every 3 years by 10% and relying on the above cited decision ₹ 18,000/- is awarded towards loss of estate and ₹ 18,000/- is awarded towards funeral expenses.

21. In the decision reported in **Magma General Insurance Company Ltd. Vs. Nanu Ram @ Chuhru Ram [2018 (18) SCC 130]** the Hon'ble Supreme Court held that the wife, children and parents of the deceased are entitled to claim compensation under the head loss of spousal consortium, parental consortium and

filial consortium respectively and an amount of ₹40,000/- each is to be awarded and further that the compensation under the head consortium is to be increased every 3 years by 10% and relying on the above cited decision **₹48,000/-** is to be awarded towards loss of consortium. The 1<sup>st</sup> petitioner being the wife of the deceased is entitled to get spousal consortium of **₹48,000/-**, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> petitioners being the children of the deceased are entitled to get parental consortium of **₹48,000/-** each and the 5<sup>th</sup> petitioner being the mother of the deceased is entitled to get filial consortium of **₹48,000/-**.

22. It is reasonable to award an amount of **₹2,000/-** towards damage to clothing and an amount of **₹4,000/-** towards transport to hospital. The injured succumbed to the injuries on the 2<sup>nd</sup> day of the accident only and considering the pain and suffering undergone by him till then an amount of **₹10,000/-** is awarded as compensation for pain and suffering.

23. The table of compensation claimed by the petitioners and the compensation awarded by the Tribunal is given below:

Sl No	Head of Claim	Amount Claimed	Amount Awarded
a	Loss of earnings from 22/03/2017 to 22/05/2017	50,000/-	-
b	Partial loss of earning	-	
c.	Transport to hospital	5,000/-	<b>4,000/-</b>
d	Extra nourishment	-	-
e	Damage to clothing and article	5,000/-	<b>2,000/-</b>
f	Medicine,bystanders etc	50,000/-	-
	Compensation for pain and suffering	1,00,000/-	<b>10,000/-</b>
	Compensation for continuing or permanent disability if any and compensation for loss of earning power Compensation K,L,M,N and O stated below	6,00,000/-	
f	Compensation for loss of dependency 2000x12x10	24,00,000/-	<b>4,41,000/-</b>
	Loss of consortium	1,00,000/-	<b>2,40,000/-</b>

	Loss of love and affection	1,00,000/-	
	Loss of estate	1,00,000/-	<b>18,000/-</b>
	Compensation for funeral expense	1,00,000/-	<b>18,000/-</b>
	Compensation loss of expectancy of life expenses	1,00,000/-	
g	Compensation for loss of amenity	8,00,000/-	
	<b>Total</b>	<b>₹45,10,000/- (Limited to ₹30,00,000/-)</b>	<b>₹7,33,000/-</b>
<b>(Rupees Seven Lakhs and Thirty Three Thousand only )</b>			

24. Since the basic ingredient has not been proved, no evidence neither the insurer nor owner can be ordered to give compensation. So petition fails and it is dismissed. No costs.

Office shall issue free copy of the award to the petitioners and the 3<sup>rd</sup> and 5<sup>th</sup> respondents forthwith.

(Dictated to Confidential Assistant transcribed and typed by her corrected and pronounced by me in open court this the 14<sup>th</sup> day of May, 2026.)

Sd/-  
Rajesh.R,  
Motor Accident Claims Tribunal.

### **Appendix:-**

#### **Exhibits for the Petitioner:-**

A1	24-03-2017	Copy of FIR
A2	24-03-2017	Copy of Scene Mahazar
A3	29-03-2017	Copy of AMVI report
A4	24-03-2017	Copy of Post-Mortem Certificate
A5	03-06-2024	Family Membership Certificate
A6	05-05-2017	Copy of Final report
A7	22-03-2017	Copy of Wound Certificate

A8 Series	--	Copy of PAN card
A8(a)	--	Copy of PAN card
A8(b)	--	Copy of PAN card

Exhibits for the Respondents:-

B1 - Copy of Policy

Third Party Exhibits:-

X1 - CD File

Witness Examined for the Petitioner:-

PW1 12-03-2025 Saviour.P

Witness Examined for the Respondents:-

RW1	18-03-2026	Francis Greek
RW2	18-03-2026	Sherif

Id/-  
Motor Accident Claims Tribunal

Note as per Rule 7(2) of destruction of records Rules 2004.(“ The parties should apply as soon as possible for the return of all documents which they may wish to preserve, as the record will be liable to be destroyed twelve years from this date”).

Data Entry By : Bindhu. R.  
Compared By : Binu.R