

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALA
Present:- Sri. K.P. Pradeep, The MACT

Tuesday, the 31st day of March, 2025
10th day of Chaithra , 1948

OP (M.V) No.738/2021

Petitioners:-

1. Omana Dasan, aged 53 years, W/o Dasan M.P,
Molathukudy Puthenpura House, Kuthukuzhy P.O,
Kothamangalam, PIN:-686 691.
2. Divya Dasan, aged 19 years, S/o Dasan M.P, Molathukudy
Puthenpura House, Kuthukuzhy P.O, Kothamangalam,
PIN:-686 691.
3. Lakshmi, W/o Ponnappan, aged 81 years,
Molathukudy Puthenpura House, Kuthukuzhy P.O,
Kothamangalam, PIN:-686 691.

By Adv. Abraham Thomas & Thomas Abraham.

Respondents :-

1. Faisal, aged 20 years, S/o Nazeer, Faisal Manzil,
Kanakakunnu, Karingannoor P.O, Kollam.
2. Muhammad, S/o Azeez, Greenland House,
Karthikapally P.O, Vadakara.
3. The Manager, United India Insurance Co.Ltd,
Pala P.O, Pala.

R1 & R2 - Ex-parte.

R3 - By Adv. Benoy Jose Mathew.

This O.P. having been finally heard on 30.03.2026 and the Tribunal on 31.03.2026 passed the following :-

AWARD

This is an application filed under section 166 of the Motor Vehicles Act 1988. Petitioners are the wife, daughter and mother of

the deceased Dasan S/o Ponnappan respectively.

2. The averments in the petition are that, on 30.3.2021 at 02.00 p.m, the deceased (Dasan) was walking by the side of the Aluva - Munnar public road. When he reached the place of occurrence, a scooter bearing No.KL-18-K-6897 ridden by the 1st respondent in a rash and negligent manner came and hit the deceased. As a result of which the deceased fell down on the road and sustained severe injuries and he succumbed to injuries on the next day. The accident occurred due to rash and negligent riding of scooter by the 1st respondent.

3. Immediately after the accident, the deceased was taken to Government Hospital, Ernakulam and thereafter referred to Medical College Hospital, Kottayam and later he succumbed to injuries on 31.03.2021. Respondents 1 to 3 are the rider, owner and insurer respectively of the scooter bearing No.KL-18-K-6897. At the time of accident the deceased was 'Coolie worker' and he would earn Rs.30,000/- per month as income.

4. Respondents 1 and 2 did not file written statement hence they were called absent and set ex-parte.

5. 3rd respondent filed written statement by contending that scooter bearing Reg. No KL-18-K-6897 had been insured with 3rd

respondent Company in the name of 2nd respondent. The age, occupation and income of the deceased mentioned in the petition are not correct. The amount claimed by the petitioners under various heads is highly exorbitant. The accident occurred due to negligence of the petitioner. The petition was filed in collusion between petitioners and other respondents. Hence the 3rd respondent Company is not liable to pay compensation to the petitioner.

7. In view of the above said pleadings, the following issues have been raised for consideration:-

- (1) Whether the accident was occurred due to the rash and negligent riding of scooter bearing No. KL-18-K-6897 by the 1st respondent?
- (2) Whether the petitioners are entitled to compensation and if so, what is the quantum?
- (3) Who is liable to pay compensation ?
- (4) Reliefs and costs ?

8. From the side of the petitioners, Exts.A1 to A7 were marked. No oral and documentary evidence were marked from the side of respondent No 3.

9. Heard.

10. **Issue No.(1):-** The case of the petitioners is that, on

30.3.2021 at 02.00 p.m, the deceased (Dasan) was walking by the side of the Aluva – Munnar public road. When he reached the place of occurrence, a scooter bearing No.KL-18-K-6897 ridden by the 1st respondent in a rash and negligent manner came and hit the deceased. As a result of which the deceased fell down on the road and sustained severe injuries and he succumbed to injuries on the next day. The accident occurred due to rash and negligent riding of scooter by the 1st respondent.

11. To prove the alleged incident and negligence on the part of the 1st respondent, the petitioners have produced Exts.A1 and A3. Ext.A1 is the copy of the FIR in crime No.619/2021 of Kothamangalam Police Station. Ext A3 is the copy of Final Report. The offences alleged against the 1st respondent (accused in the final report) are punishable U/ss 279, 337 & 304(A) of IPC. The Hon'ble High Court of Kerala in '**New India Assurance Company Ltd Vs. Pazhaniammal and Others**', cited in 2011(3) KHC 595, has held as follows: *"Prima facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such 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 charge sheet is filed, the tribunals 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 the absence of contra evidence, the above said evidence adduced by the petitioners, it is seen that the alleged incident took place due to rash and negligent riding of scooter bearing No.KL-18-K-6897 by the 1st respondent. Accordingly Issue No.(1) is answered.

12. **Issue Nos.(2)** :- Ext.A2 is the copy of postmortem certificate issued from Medical College Hospital, Kottayam.

13. A4 is the Relationship Certificate issued by the Village Officer, Eramalloor. It reveals that petitioners are the wife, daughter and mother of the deceased.

14. Ext A5 is the copy of extract of school admission register and which shows that the date of birth of the deceased was 30.5.1965. Hence he was 55 years of age at the time of accident. Ext A6 is the copy of PAN card of the petitioners 1 and 2.

15. Ext A7 series are the copies of bank passbooks of the petitioners.

16. Petitioners claim that deceased was a ‘coolie worker’ and he would earn Rs.30,000/- as income per month. But, there

is nothing on record to show how much the deceased was earning at the time of accident. So, for the purpose of determining the compensation payable under the head 'loss of dependancy' and the like, the only option left is to fix his monthly income notionally. In **Ramachandrappa's Case, the Hon'ble Supreme Court in 2011(13) SCC 236** had fixed ₹4,500/- as notional income of Coolie worker in the year 2004, when the victim was 37 years of age. In **Sayed Sadique Case [2014] 2 SCC 735**, the income of the victim aged 24 years in the year 2008, ₹6,500/-was fixed for Coolie worker.

17. In a motor accident cases to grant compensation for permanent disability notional income has to be fixed. At the time of fixing the notional income the Court has to consider the minimum wages Act applicable in Kerala. At the same time in the absence of any salary certificate the minimum wage notification can be yardstick, but at the same time it cannot be absolute one to fix the income. In the absence of documentary evidence on record some amount of guess work is required to done. But at the same time guess work for assessing the income should not be totally detached from the reality. Merely because claimant was unable to produce documentary evidence to show the monthly income same does not

justifies adoption of lowest tier of minimum wage while computing the income. Here in this case the petitioners claim that the deceased was a 'coolie labourer'. Deceased has 55 years of age at the time of accident. Considering the age, nature of work and other relevant aspects I am of the view that notional income of the deceased can be fixed as ₹19,000/- per month. Hence it is fixed as ₹19,000/-

18. As the deceased was 55 years of age, the multiplier applicable is 11 as per the decision rendered by the **Hon'ble Apex Court in 'Sarla Verma V Delhi Transport Corporation' cited in 2010(2) KLT 802.**

19. 1st petitioner is the wife, 2nd petitioner is the daughter and 3rd petitioner is the mother of the deceased and they are considered as dependents of the deceased. Therefore $\frac{1}{3}$ of the monthly income is to be deducted towards personal and living expense of the deceased, while determining above said compensation, as per the decision of the Hon'ble Apex Court rendered in '**Sarla Varma's** case cited above.

20. As the deceased was 55 years of age, 10% addition of his income towards future prospects is warranted in determining the above said compensation in the light of decision rendered by the

Hon'ble Apex Court in 'National Insurance Company Ltd., Vs. Pranay Sethi cited 2017(4) KLT 662 = AIR 2017 SC 5157.

Thus the annual income of the deceased comes to the tune of ₹2,50,800/-(19000 x (19,000 +10%) x 12] and compensation for loss of dependency, after deducting 1/3 of the amount towards personal and living expenses of the deceased and applying multiplier 11, would be an amount of **Rs.18,39,200/-**[2,50,800 x 11 x 2/3].

21. As three years have passed since the pronouncement of judgment in '*Pranay Sethi*' case cited supra, enhancement of reasonable figures fixed therein on conventional heads viz., Loss of Estate, Loss of Consortium and Funeral expense, at the rate of 10% in every three year bloc is warranted as laid down therein by the Hon'ble Apex Court. Accordingly, **Rs.18,150/-** is granted as 'Funeral expense', and **Rs.18,150/-** is granted as compensation under the head 'Loss of Estate' and **Rs.48,400/-** each is granted to 1st petitioner as spousal consortium, 2nd petitioner as parental consortium and 3rd petitioner as filial consortium.

22. As it has been laid down by the **Hon'ble High Court of Kerala** in ***Kunjandi Vs. Rajendran*** reported in **2020 (2) KLT 315**, the Hon'ble High Court of Kerala has held as follows: "

Once the surviving spouse is awarded compensation towards spousal consortium, or the children of the deceased are awarded compensation towards parental consortium or the parents of the deceased child are awarded compensation towards filial consortium, they are not entitled for award of further compensation under the head loss of love and affection, as it would result in duplication or overlapping of compensation under the relevant heads". As petitioner had already been awarded compensation under the head 'Loss of Consortium', I am not inclined to award any amount under the head 'Loss of love and affection' in the light of above said decision of the Hon'ble High Court of Kerala.

23. The **Hon'ble High Court of Kerala in 'Jyni and Others Vs. Raphel P.T. and Others reported in 2016(2) KHC 870'**, has held as follows:- *'In cases of instantaneous death as well as cases where the deceased was unconscious between the time of accident and the time of his death, some notional amount is payable under the head pain and suffering. A slightly higher amount can be awarded under this head, if death is not instantaneous. Therefore, 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.' Ext.A3 final report reveals that the accident occurred on 30.3.2021 and the death was occurred on 31.3.2021. Considering the said fact, I am inclined to award an amount of **Rs.6,000/-** under the head 'Pain and suffering' in the light of the said decision reported in **2016 (2) KHC 870**.

24. An amount of **Rs.1,000/-** is further awarded as 'Compensation for damages to clothing'.

25. An amount of **Rs.6,000/-** is awarded as compensation under the head 'Transport expense'.

26. Thus, petitioner is entitled to get a total compensation of **₹20,33,700/-(Rupees Twenty Lakhs Thirty-three Thousand and Seven Hundred Only)** is awarded as shown in the table below:-

Sl.	Head of Claim	Amount Claimed (in Rupees)	Amount Awarded (in Rupees)	(In	Basis-Vital Details in a nut shell
<u>Part-1</u>					
1	Loss of earning	Nil	Nil		-
2.	Transportation charge including Ambulance charges	50,000	6,000		Travel to and from the hospital

3.	Damage to clothing	1,000	1,000		Moderate rate
4	Funeral Expenses	1,00,000	18,150		
	For extra nourishment	1,000	Nil		
6	Medical Expenses	Nil	Nil		
Part-11					
7	Pain and suffering	4,00,000	6,000		
8.	Compensation for Loss of dependancy	20,00,000	18,39,200		(19000+(19000x10%)x12x11x2/3)
9.	Compensation for Loss of Estate	10,00,000	18,150		
10	Compensation for Loss of consortium	10,00,000	1,45,200		48400 x 3
11.	Compensation for loss of love and affection	25,00,000	Nil		
	Claim is limited to ₹40,00,000/-	₹70,52,000/-	₹20,33,700/- =====		
Total award amount					
(Rupees Twenty Lakhs Thirty-three Thousand and Seven Hundred Only)					

27. In the matter of apportionment, 80% the award amount with interest is apportioned in favour of the 1st petitioner, wife of

the deceased and 10% of the award amount with interest is apportioned in favour of the petitioner No. 2, daughter of the deceased and 10% of the award amount with interest is apportioned in favour of the petitioner No. 3, mother of the deceased. The issue No. 2 is answered accordingly.

28. **Issue No.(3):-** I have already found that the accident took place due to the negligent riding of scooter bearing No.KL-18-K-6897 by the 1st respondent. 2nd respondent is the owner of the vehicle and hence he is vicariously liable to pay compensation to the petitioners. It is admitted by the 3rd respondent that the said scooter had been insured with the 3rd respondent at the time of accident. Therefore, respondents 1 to 3 are liable to pay compensation. Since there is valid insurance policy, the company has to indemnify 2nd respondent and therefore, the company is liable to pay the compensation. Accordingly Issue No.(3) is answered.

29. **Issue No.(4):-** In view of my findings on issue Nos.1, 2 and 3, the petition is allowed in part and an award is passed as follows:-

- (1) The 3rd respondent shall pay **₹20,33,700/-(Rupees Twenty Lakhs Thirty-three Thousand and Seven Hundred Only)** together with interest at the rate of 9% per annum from the date of petition [18.08.2021] till realization, with

proportionate costs.

- (2) The 3rd respondent is directed to deposit the award amount together with interest and costs to the account of the petitioner ie, the Savings Bank Account of the petitioner No 1, Account Number 8253022000020640 of Pala Urban Co-operative Bank Ltd., Pala Branch with IFSC: UTIB0SPUC50 and the Savings Bank Account of the petitioner No 2, Account Number 8253022000020639 of Pala Urban Co-operative Bank Ltd., Pala Branch with IFSC: UTIB0SPUC50 and the Savings Bank Account of the petitioner No 3, Account Number 43232210001058 of Canara Bank, Kothamangalam Branch with IFSC: CNRB0000712 as per the details produced by the petitioner and compliance of the same shall be reported to the MACT, Pala.
- (3) The 3rd respondent shall produce cheques for Rs.39,373/- and Rs.40,000/- respectively as court fee and additional court fee towards legal benefit fund in the name of MACT, Pala, payable in the case.
- (4) The 3rd respondent is directed to file before the Tribunal a statement regarding compliance of the order along with a copy of transaction record certified by the bank concerned.
- (5) The office is directed to furnish a copy of said statement to the petitioner after due verification.
- (6) The office is directed to make necessary entries in the registers maintained in the office evidencing payment of amount to the claimant.

- (7) The 3rd respondent is directed to pay the amount within one month failing which the petitioner can recover the same in accordance with law.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 31st day of March, 2026.

Sd/-

K.P.PRADEEP
MOTOR ACCIDENTS CLAIMS TRIBUNAL.

APPENDIX

EXHIBITS MARKED FOR THE PETITIONER

A1	01.04.2021	:	Photo copy of the FIR in crime No.619/2021 of Kothamangalam Police station.
A2	02.04.2021	:	Photo copy of the Postmortem certificate of Desan issued from Medical College Hospital, Kottayam.
A3	23.05.2021	:	Photo copy of the Final Report.
A4	25.03.2025	:	Relationship certificate of deceased Dasan issued by Village Officer, Eramallor Village Office.
A5	Nil	:	Photo copy of the extract of school admission register of Das Prakash.
A6	Nil	:	Photo copy of the Pan card of Omana Dasan, Divya Dasan.
A7(Se ries)	Nil	:	Photo copy of the Bank Pass Books of Omana Dasan, Divya Dasan & Lakshmi Dasan.

EXHIBITS MARKED FOR THE RESPONDENTS:- NIL
COURT EXHIBITS :-NIL

THIRD PARTY EXHIBITS:- NIL

WITNESS EXAMINED FOR BOTH PARTIES:- NIL

Id/-
MACT

STATEMENT OF COSTS
OP(MV) No.738/2021

Court Fee	:	19,710.00
Stamp for Vakalath	:	6.00
Stamp for Petitions		15.00
Stamp for Exhibits		50.00
Service of Process	:	90.00
Advocate fee	:	1,04,085.00
Others	:	300.00
Total	:	₹ 1,24,256.00

Proportionate Costs = $\frac{1,24,256 \times 20,33,700}{40,00,000} = \text{₹}63,175/-$ (Allowed)
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//True Copy//

Typed by : Sreeja
Compared by : Jobi

Sd/-

Motor Accidents Claims Tribunal

"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 after twelve years from this date".

**COPY OF AWARD IN
OP (M.V) No.738/2021
DATED: 31.03.2026**