IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, TIRUR

Present:- Sri.Sreejith.S., B.A., L.L.B.(Hons), M.A.C.Tribunal

Monday, the 24th day of March, 2025

OP(MV) No. 447 OF 2021

Between :-

1.	Udayabhanu. K, 59 years, S/o. Kunhoottan Nair, Gopalam (H), Poozhikkunnu, Triprangode (via), Poyilisseri P.O, Tirur Taluk, Malappuram (Dist), Pin : 676 102	Petitioners
2.	Harikrishnan, 29 years, S/o. Udayabhanu. K, Gopalam (H), Poozhikkunnu, Triprangode (via), Poyilisseri P.O, Tirur Taluk, Malappuram (Dist), Pin : 676 102	
3.	Kallyanikutty Amma, 81 years, W/o. Gopalan Nair, Jayamandiram, Hanumankavu, Poyilisseri P.O, Triprangode, Tirur Taluk, Malappuram (Dist), Pin : 676 102	

And :-

1.	K. K. Valsan, S/o. K. N. Krishnan, Kottekalahil (H), Elavampadam P.O, Kizhakkancheri, Palakkad (Dist), Pin : 678 684 (Driver cum Owner)	Respondents
2.	The New India Assurance Co. Ltd, Thoppumpady Branch, Edathil Building, 1st Floor, Thoppumpady, Cochin, Pin : 682 005	

Petition filed on : 01.09.2021
Amount Claimed : ₹1,00,15,000/-
Court Fee Paid : ₹5/-

This petition coming on the 28th day of January, 2025 for final hearing before me in the presence of Sri. P. P. Ravoof, Advocate for the petitioners and of Sri. Syamjith, Advocate for the 1st respondent and Sri. Sajina. T. Nair, Advocate for the 2nd respondent and having stood over for consideration to this day, this Tribunal passed the following:-

A W A R D

This is an application U/s.166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of one Jayalatha as a result of an accident, filed by the husband, son and mother of the deceased.

2. The case of the petitioners in a nutshell, is as follows:- On 25.01.2021, at about 4.30 p.m., Jayalatha was travelling as a pillion rider on a scooter bearing Reg.No.KL-55-F-1740 from Tirur Boys High School to Alathiyur and when they reached at North BP Angadi, a container lorry bearing Reg. No.KL-54-H-1444 driven by the 1st respondent, in a rash and negligent manner, hit the Scooter. Due to the impact of the hit, Jayalatha fell down and the lorry ran over her body and she succumbed to her injuries. The 1st respondent is the owner cum driver of the offending vehicle and 2nd respondent is the insurer of the Lorry. So, the petitioners contend that all the respondents are jointly and severally liable to pay compensation to the petitioners. At the time of the accident the deceased was aged 51 years old and the petitioners claims that she was a Teacher at Govt. Boys Higher Secondary School, Tirur by profession and earns ₹74,830/- per month. Hence, petitioners are claiming ₹1,00,15,000/- as compensation, under various heads.

3. The 1st respondent filed vakalath, but did not file written statement.

4. The 2nd respondent filed a written statement raising the following contentions:- The 2nd respondent admitted the insurance policy. The age, occupation, and monthly income of the deceased etc. were disputed by the 2nd respondent. Further, the 3rd respondent contented that the amount claimed is

exorbitant and excessive and the claim was filed without any grounds. The 2nd respondent averred that the negligence was not on the part of the 1st respondent. The 2nd respondent pressed for dismissal of the petition.

5. Having regard to the arguments and the evidence produced following issues were framed for trial:-

(1) Whether the accident occurred due to the negligent driving of lorry bearing Reg. No.KL-54-H-1444 by respondent No.1?

(2) Whether the death of Jayalatha occurred as a result of injuries sustained in the accident involving lorry bearing Reg. No.KL-54-H-1444 driven by the 1st respondent?

(3) Whether the petitioners are entitled to recover any compensation? If so, what is the quantum?

(4) Who is liable to pay compensation?

(5) Relief and cost?

6. **<u>Issue No.1</u>**:- The specific case of the petitioners is that while deceased Jayalatha was travelling as a pillion rider on a motorcycle bearing Reg.No.KL-55-F-1740 from Tirur to BP Angadi side, and when she reached BP Angadi Bypass Junction, due to the negligence of the 1st respondent, the lorry hit the deceased's Scooter, thereby causing serious injuries to the deceased and that she succumbed to her injuries. The petitioners allege that the accident had happened due to the rash and negligence on the part of the 1st respondent. To prove their case, the petitioners produced Ext.A1 FIR, Ext.A2 scene mahazar, Ext.A3 AMVI report and Ext.A4 Final report. Ext.A4 would reflect that the accident had occurred due to the rash and negligent driving of the lorry bearing Reg. No.KL-54-H-1444, by the 1st respondent and he was charged U/s.279, 337 and 304(A) of IPC. Ext.A3 certificate from the AMVI would show that no mechanical defects were seen on the lorry involved in the accident. While considering the present issue, this Tribunal is guided by the dictum laid down by the Hon'ble High Court of Kerala in ***New India Assurance Company Vs. Pazhaniammal and Others*** reported in ***ILR 2011 (3) Kerala 677***. In para 7 of the judgment in ***Pazhaniammal (Supra)*** the Hon'ble High Court held that,

> *"But 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. A system cannot feed itself on a regular diet of distrust of the police. 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."*

7. Placing reliance on the said dictum, it can be held that in the absence of contra evidence Ext.A4 final report can be taken as a prima facie proof for the act of negligence committed by the 1st respondent against whom the charges laid. The said dictum laid down in ***Pazhaniammal (Supra)*** was reiterated by the Hon'ble High Court of Kerala in ***Samad. M.P. and Others Vs. Binu and Others, 2020 KHC 444***. So, this Tribunal holds that the evidence adduced by the petitioners is sufficient to prove that the accident occurred due to the rash and negligent driving of respondent No.1. Issue No.1 is answered in favour of the petitioners.

8. **Issue No.2**:- The case of the petitioners has already been discussed in detail above. Now, to proceed with the adjudication of the claim of the petitioners, it is incumbent on this Tribunal to find whether Jayalatha died consequent to the accident alleged in the petition. Then, the Counsel for the petitioners drew this Tribunal's attention to Ext.A5 postmortem certificate. Ext.A5 postmortem certificate would show that Jayalatha's death was due to injuries sustained to abdomen and chest. There has been no evidence adduced by the 2nd respondent to disprove the findings in Ext.A5 certificate. Hence, this Tribunal finds that the petitioners have succeeded in proving that the deceased died as a result of the injuries sustained in the lorry accident as alleged in the petition.

9. **Issue No.3**:- The petitioners have approached this Tribunal as legal representatives of the deceased Jayalatha claiming compensation. The petitioners have produced Ext.A6 family membership certificate to prove that they are the legal heirs of the deceased. The Counsel for the petitioners relied on the decision of ***United India Insurance Company Ltd. Vs. Shalumol and Others, 2021 (5) KHC 28***, and argued that all the petitioners are legal representatives of the deceased and they are entitled to compensation as claimed in the petition. In ***Shalumol (Supra)*** the Hon'ble High Court of Kerala, after placing much reliance on the decision of the Hon'ble Apex Court in ***Montford Brothers of St. Gabriel and Another Vs. United India Insurance and Another, 2014 (3) SCC 394***, held,

> *"Dependency is only a criteria for a legal representative to claim compensation for loss of dependency U/s.166 of the Act 1988, and is not to be or an end of criteria to pay compensation for a particular need and the compensation under the other pecuniary, non-pecuniary, conventional and heads of compensation etc. However, in a claim petition filed U/s.166 of the Act, the dependent has to be a legal representative of the deceased following Rule 2(k) of Kerala*

Rules, 1989 otherwise, the expression legal representatives will be rendered otiose."

10. In **Shalumol (Supra)** the Court further held, *"Even if, dependency is a relevant criteria to claim compensation for loss of dependency, it does not mean financial dependency is the 'ark of the covenant'. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in loss of money."*

11. Having regard to the above proposition of law and the relevant factual circumstances, this Tribunal finds that the petitioners who have established that they are the legal representatives of the deceased, is legally entitled to claim compensation under the provisions of Motor Vehicles Act.

12. This Tribunal will now embark on the imperative task of ascertaining the right of the petitioners to claim compensation and the legally entitled quantum of compensation for the petitioners. The learned Counsel for the petitioners would argue that the compensation for the petitioners is to be fixed under various heads in the light of the decisions of the Hon'ble Apex Court on this point. The petitioners have claimed that the deceased Jayalatha was a Teacher at Govt. Boys HS School, Tirur, Thekkummuri and she was earning ₹74,830/- per month and produced Ext.A7 Salary slip for the month of December 2020 to substantiate the same. Per contra, the counsel for the 2nd respondent submitted that notional income has to be fixed as per the decision of the Hon'ble Apex court in **Ramachandrappa Vs. Manager, Royal Sunderam Alliance Insurance Company Limited** reported in **2011 (3) SCC 236.** Ext.A8 salary certificate would prove that the deceased was working as a Teacher at a Higher Secondary School and she was drawing a salary at the rate of ₹74,830/- per month. Ext. A8 salary certificate showing that petitioner's

salary for the month of January, 2021 is Rs.85,000/- was produced. The petitioner died on 25.01.2021. So salary for the month of December, 2020 can be considered for calculating compensation. The salary to be considered while computing the quantum of compensation is the salary after deducting tax. Ext.A7 does not reflect the tax paid by the deceased. 10% tax can be deducted from the salary. So, considering the evidence adduced in this case and other relevant aspects, the income of the petitioner after deducting tax is fixed as ₹67,392/- per month (74830-7483). In view of the Hon’ble Apex Court decision in **National Insurance Company Vs. Pranay Sethi, AIR 2017 SC 5157**, since the deceased was 51 years of age at the time of the accident, 15% of the income can be taken as future prospects towards the deceased’s income. By adding 15% towards future prospects, the monthly income would come to ₹77,500/- (67,392+10,108). So, considering the evidence adduced in this case and other relevant aspects, this Tribunal fixes the income of the deceased as ₹77500/- per month.

13. In ***Sarla Varma v. Delhi Transport Corporation***, ***2009 (6) SCC 121,*** the Hon’ble Apex Court laid down the essential factors which need to be proved by the claimants for ascertaining the amount of compensation, in death cases. According to ***Sarla Varma (Supra)*** (i) age of the deceased, (ii) the income of the deceased and (iii) the number of dependents, are the three important factors that required consideration in death cases. In terms of Ext.A9 copy of SSLC certificate, the date of birth of the deceased is shown as 30.5.1969. So, it can be ascertained that she was 51 years at the time of the accident. The Counsel for 2nd respondent submitted that there is no dispute with respect to the age of the deceased. So, multiplier to be applied as per the decision in ***Sarla Varma (Supra)*** is 11.

14. Now, the next important aspect to be considered and evaluated is the deduction towards personal and living expenses of the deceased. The deceased was survived by her husband, son and mother. Petitioners are the legal representatives of the deceased. Therefore, following the decision in **Sarla Verma (Supra)** referred to above, 1/3rd of the portion of the income of the deceased is to be deducted towards the personal and living expenses of the deceased. So, the amount of compensation due to the petitioners on account of loss of dependency is worked out as **₹68,20,000/- (77,500x12x2/3x11)**.

15. The next point to be ascertained concerns the reasonable amounts to be awarded under the conventional heads viz. loss of estate, loss of consortium and funeral expenses. Having regard to the decision of the Hon'ble High Court in **Pranay Sethi (Supra)** the amounts to be awarded under the above referred conventional heads are ₹15,000/-, ₹40,000/- and ₹15,000/- respectively. The aforesaid amount should be enhanced at the rate of 10% each in every 3 years, as held in **Pranay Sethi (Supra)**. Since the accident happened on 25.1.2021, this Tribunal holds that the petitioners are entitled to get compensation of ₹16,500/- on account of loss of estate and ₹16,500/- towards funeral expenses, and ₹44,000/- towards loss of consortium. The Counsel for the petitioners contented that the petitioners are entitled to ₹44,000/- each towards loss of consortium. However, this argument was strenuously opposed by the Counsel for 2nd respondent by relying on the judgment of the Hon'ble High Court of Kerala in ***Jyothi Lakshmi v. Binoy Augusthy [2025 KHC 1501]***. I find some force in the contention of the Counsel for the 2nd respondent. In **Jyothi Lakshmi (Supra)**, the Hon'ble High Court, after placing reliance on the Apex Court Judgment in ***Shriram General Insurance Co. Ltd. v. Bhagat Singh Rawat (2023 KH Online 7244)*** held that the compensation under the loss of consortium cannot be granted to each of the

legal representatives. Hence, this Tribunal holds that the petitioners are entitled to ₹44,000/- towards loss of consortium.

16. Even though the Petitioners have claimed ₹50,000 for pain and suffering, the same cannot be granted in the light of the Judgment of the Apex Court Judgment in **United India Insurance Company v. Satinder Kaur 2021 (11) SCC 780**. Since, the deceased died on the same day of the accident, ₹3,000/- is awarded towards the expenses of transport to hospital and ₹1,000/- is awarded towards compensation for damages to clothing. Compensation claimed in all other heads, other than the one discussed above, are denied for want of evidence.

17. The details of the compensation can be set out in tabular form below:-

Sl. No.	Head of Claim	Amt. Claimed (In Rupees)	Amt. Awarded (In Rupees)	Basic Vital details in a nut shell	Remarks
	Monthly income of the deceased	74,830/- (amount claimed)	67,392/- (amount fixed)		
1	Loss of earning for 6 months	60,000	-		
2	Partial loss of earning	-	-		
3	Transport to hospital	15,000	3,000		
4	Extra nourishment	-	-		
5	Damage to clothing and articles	-	1,000		
6	Others:Funeral and post funeral expenses	50,000	16,500		
7	Compensation for pain and suffering.	50,000	-		
8	Compensation for the loss of dependency	-	68,20,000/-	77500x12x2/3x11	

9	Compensation for loss of future pecuniary benefits to the dependents	92,40,000	-		
10	Compensation for the loss of estate	3,00,000	16,500		
11	Compensation for loss of consortium	1,00,000	44,000		
12	Compensation for loss of love and affection	1,00,000	-		
13	Compensation for mental agony	1,00,000	-		
	Total ₹	**1,00,15,000/-**	**69,01,000 /-**		

So, the issues are answered accordingly in favour of the petitioners.

18. **<u>Issue No.4</u>**:- This Tribunal has already found that the petitioners are entitled to get compensation to the tune of **₹69,01,000/- (Rupees Sixty Nine lakh and one thousand only)**. Also, this Tribunal has concluded that the petitioner had sustained the above-mentioned bodily injuries as a result of an accident which was caused due to the rash and negligence attributed on the side of the 1st respondent. Since 1st respondent is the owner cum driver of the offending vehicle, he is primarily liable to pay the compensation to the petitioner. But, the lorry bearing Reg.No.KL-54-H-1444, which is the offending vehicle, was insured with the 2nd respondent at the time of the accident, the 2nd respondent has admitted the policy. So, in terms of the policy, this Tribunal holds that the 2nd respondent is liable to pay compensation to the Petitioners. Concerning the interest which is to be granted in favour of the petitioners, this Tribunal is of the view that rate of interest can be reasonably fixed as 7% on the amount of compensation.

19. **<u>Issue No.5</u>**:- In the result, the application stands allowed awarding compensation of **₹69,01,000/- (Rupees Sixty nine lakh and one thousand**

only) with interest @ 7% per annum, from the date of institution of the petition till the date of deposit of the amount, with proportionate costs. In view of the the Hon'ble Apex Court Judgment in ***KSRTC v. Susamma Thomas AIR 1994 SC 1631***, the procedure of the payment and distribution of compensation awarded is set out below. The 2nd respondent shall pay the said amount within 30 days by depositing the amount in the bank account of MACT, Tirur in the following manner:

1) The 2nd respondent shall deposit the entire compensation amount as awarded in the S.B account No. 42816630241, IFSC : SBIN0000262 of this Tribunal maintained in the State Bank of India, Tirur within 30 days on receipt of the award copy or from the date which the award copy is ready for delivery in this Tribunal.
2) The 2nd respondent shall submit a detailed statement with full particulars regarding the case number, name of court, date of award, total compensation amount awarded, whether any deductions are made towards the income tax and the details of apportioned amount deposited in accordance with the award, before the bank.
3) Simultaneously, a copy of the statement shall be furnished to this Tribunal too along with payment advice for remittance of compensation issued by the bank making remittance to the account of this tribunal on behalf of the 2nd respondent in the format prescribed in Circular No.01/2024 of the Honorable High Court of Kerala for proper accounting and to take further actions.
4) On receipt of the statement regarding deposit in the office, office shall take steps for the remittance of **₹99,523/- (Rupees Ninety Nine Thousand Five Hundred and Twenty Three only)** towards the Court

fee and **₹1,00,150/- (Rupees One Lakh and One Hundred and Fifty only)** towards Legal Benefit Fund.

5) On receipt of the deposit, the State Bank of India, Tirur shall transfer (after deducting court fees and LBF), **₹4,00,000/- (Rupees Four lakh only)**, with proportionate interest and cost to the **A/C No.40030599848** of the 1st petitioner maintained in the **SBI**, at **BP Angadi Branch**, and shall transfer **₹4,00,000/- (Rupees Four lakh only),** with proportionate interest and cost to the **A/C No.32392017306** of the 2nd petitioner maintained in the **State Bank of India**, at **BP Angadi Branch,** and shall transfer **₹4,00,000/- (Rupees Four lakh only),** with proportionate interest and cost to the **A/C No.2205005001259** of the 3rd petitioner maintained in the **Tirur Urban Co-operative Bank Ltd.,** at **B.P. Angadi Branch.** Copy of the pass book duly attested by the bank concerned furnished by the petitioners shall form part of the award for the conformation of details.

6) Out of the balance amount, 40% each shall be deposited as fixed deposit in the name of 1st & 2nd petitioners, balance 20% in the name of 3rd petitioner, for a period of 5 years in the bank that the petitioners prefer. The fixed deposit shall have a lien marked on the face of the receipt stating that the amount shall be paid only on maturity or the order of the Tribunal/Hon'ble High Court by crediting to the account of the petitioners. Fixed deposit amount on maturity shall be automatically credited to the account of the petitioners.

7) After complying the above direction, the 2nd respondent shall file a statement regarding the compliance of the order along with the copy of transaction records certified by the banks concerned. On production of such statement a copy of the same counter signed by the Tribunal shall

be issued the petitioners. Upon production of counter signed statement referred above the State Bank of India, Tirur branch shall hand over the FD receipt to the petitioners.

8) For confirmation of the receipt and remittance of the award amount, the State Bank of India Shall furnish a detailed statement with full particulars to this Tribunal for cross checking and making entries in the registers maintained in the Tribunal.

9) If any tax is deducted at source, the insurance company shall produce Form- 16 of Income Tax Act so as enable to the petitioner to seek relief of the tax.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court on this the 24th day of March, 2025).

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Appendix:-

Petitioner's Witness :- NIL

Petitioner's Exhibits :-

A1-	25.01.2021	: True copy of F.I.R in crime No.68/2021 of Tirur Police Station.
A2-	26.01.2021	: True copy of Scene Mahazar
A3-	29.01.2021	: True copy of AMVI's Report
A4-	13.02.2021	: True copy of Final Report
A5-	26.01.2021	: Post-Mortem Certificate
A6-	19.02.2021	: Family Membership Certificate
A7-	07.01.2021	: Salary Slip
A8-	18.09.2023	: Salary certificate
A9-	---	: True copy of SSLC
A10-	---	: True copy of Aadhar card

<u>Respondents' Witness</u> :- NIL
<u>Respondents' Exhibits</u> :- NIL
<u>Court Exhibits</u> :- NIL

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

<u>PETITIONER'S COSTS ALLOWED</u>

Sl. No.	Items	Amount allowed
1	Court fee	68382
2	Stamp on Vakalath	3
3	Stamp on document	30
4	Stamp on petition	50
5	Postal charge	90
6	Writing Charge	---
7	Typing Charge	250
8	Batta	12
9	Advocate Fee Senior	347450
10	Advocate Fee Junior	---
	Total ₹	**416267**
(Rupees Four Lakh sixteen thousand two hundred and sixty seven only)		

Sd/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL

/True copy/

SHERISTADAR

Typed by: Aneesa M. K
Compared by:- 1) 2)
<u>Foot Note</u>:- "The parties should apply as soon as possible for the return of all documents which they may wish to preserve as the records will be liable to be destroyed after twelve years from this date".

Copy of Fair Award in
OP(MV)No.447/2021
Dated:24.03.2025