In the Court of the Motor Accidents Claims Tribunal, Mavelikara

Present: Sri. K N Ajith Kumar, Motor Accidents Claims Tribunal
(Additional District & Sessions Judge-II)

Thursday, the 23rd January 2025 / 3rd Magha 1946

OP (MV) 711/2019, OP(MV) 903/2019 & OP(MV) 933/2019

OP (MV) 711/2019
(Filed on 03.06.2019)

Petitioner: Zeenath, 50 yrs, W/o Kamarudeen,
Faseela Manzil, Kunnikkodu PO.,
Vilakudi Panchayath, Pathanapuram.
Now residing at Greenland, Puthiyakavu,
Mavelikara.

By Adv. K A Nazar.

Respondents :

1. Anas, 32 yrs, S/o Unus Kunju, Darul Najad House, Vilakkudi PO., Pathanapuram.

2. Jaison Jacob, W/o Ameen, 12/90(13/646), Darul Najath, Vilakudi Panchayath, Kollam – 691508.

3. The Manager, National Insurance Co. Ltd., Div. No.ID, Flat No. 101-106, N-1 BMC House, Cannaught-Place, New Delhi.

R1, R2 – Ardra Sreekumar, R3 by Adv. K A Nazeedha.

OP (MV) 903/2019
(Filed on 01.07.2019)

Petitioners:

1. Riyas, 29 yrs, S/o Salimsha Ibrahimkutty,
Riyas Manzil, Kunnikkodu PO.,
Vilakudi, Pathanapuram.
Now residing at Evergreen House, Prayikkara,
Mavelikara.

2. Zeenath, 50 yrs, W/o Kamarudeen,
Faseela Manzil, Kunnikkodu PO.,
Pathanapuram. Now residing at Evergreen House,
Prayikkara, Mavelikara.

3. Fousiya, 24 yrs, D/o Kamarudeen, Faseela Manzil,
Kunnikkodu PO., Pathanapuram. Now residing at
Evergreen House, Prayikkara, Mavelikara.

By Adv. K A Nazar.

<u>Respondents</u> :

1. Anas, 32 yrs, S/o Unus Kunju, Darul Najad House,
Vilakkudi PO., Pathanapuram.

2. Jaison Jacob, W/o Ameen, 12/90(13/646),
Darul Najath, Kunnikodu PO., Vilakudi,
Kollam – 691508.

3. The Manager, National Insurance Co. Ltd.,
Div. No.ID, Flat No. 101-106, N-1 BMC House,
Cannaught-Place, New Delhi.

R1, R2 – Ardra Sreekumar, R3 by Adv. K A Nazeedha.

<u>OP (MV) 933/2019</u>
(Filed on 05.07.2019)

<u>Petitioners</u>:

1. Zeenath, 50 yrs, W/o Kamarudeen,
Faseela Manzil, Kunnikkodu PO.,
Vilakudi Panchayath, Pathanapuram.
Now residing at Evengreen House, Prayikkara,
Mavelikara.

2. Fousiya, 24 yrs, D/o Kamarudeen,
Faseela Manzil, Kunnikkodu PO.,
Vilakudi Panchayath, Pathanapuram.
Now residing at Evengreen House, Prayikkara,
Mavelikara.

3. Rukhiya Beevi, 84 yrs, W/o Jamaludheen Kunju,
Evergreen, Kunnikkodu PO., Pathanapuram.

Now residing at Evengreen House, Prayikkara, Mavelikara.

By Adv. K A Nazar.

Respondents : 1. Anas, 32 yrs, S/o Unus Kunju, Darul Najad House, Kunnikodu PO., Vilakkudi, Pathanapuram.

2. Jaison Jacob, W/o Ameen, 12/90(13/646), Darul Najath, Kunnikodu PO.,Vilakudi, Pathanapuram – 691508.

3. The Manager, National Insurance Co. Ltd., Div. No.ID, Flat No. 101-106, N-1 BMC House, Cannaught-Place, New Delhi.

R1, R2 – Ardra Sreekumar, R3 by Adv. K A Nazeedha.

These OP (MV)'s having been finally heard on 13.01.2025 and the Tribunal on 23.01.2025 passed the following:

COMMON AWARD

The above claim petitions have been filed by the claimants u/s.166 of the M.V Act and the applications have been tried jointly and OP(MV)711/2019 has been considered as the leading case and evidence adduced in the said case.

2. OP(MV) 711/2019 has been filed by the claimant claiming compensation of **Rs.23,00,000**/- on account of the injuries allegedly sustained by her in road traffic accident. OP(MV)903/2019 has been filed by the claimants claiming compensation of **Rs.40,00,000/-** on account of the death of the deceased Faseela (herein after referred to as the deceased in OP(MV)903/2019) and OP(MV)933/2019 has been filed by the claimants claiming compensation of **Rs.20,00,000/-** on account of the

death of the deceased Kamarudheen (herein after referred to as the deceased) in the above accident.

3. The brief facts of the common case of the claimants leading to the filing of these claim petitions are as follows:- On 20.12.2018 at about 5.50 AM, the injured claimant and the deceased Faseela and Kamarudheen were travelling in a Car bearing Reg.No.KL 25/M/4201 driven by the first respondent along the Alappuzha-Ernakulam National highway. When the car reached near Govt. School, Pattanakkad, it hit on the back side of a container lorry, which was parked at the western side of the road, due to the rash and negligent driving of the first respondent. As a result, the passengers sustained severe injuries and Faseela and Kamarudheen succumbed to their injuries. Zeenath sustained severed injuries. The respondents 1 to 3 in all the cases were the driver, registered owner and insurer of the offending vehicle. he accident occurred due to the negligence on the part of the 1st respondent. Therefore, the respondents were liable to compensate the claimants.

4. On issuance of notice, the respondents 1 and 2 in all cases remained exparte.

5. The 3rd respondent in all cases entered appearance and filed written statements with the following common contentions admitting the insurance policy coverage of the vehicle but contesting the claim on various grounds stating that the narration of the accident is untrue and denied. The age, occupation and monthly income of the claimant and the deceased were disputed and also denied all other material averments in the petition and sought for strict proof of it. On the above grounds, the 3rd respondent prayed for dismissal of the original petitions.

6. Based on the pleadings in the original petition, written statements and on perusal of documents produced, the following issues were framed for trial:-

1. Was there an accident due to the negligent driving of the Car bearing Reg.No.KL 25/M/4201 by the 1st respondent ?
2. Whether the claimants in OP(MV)711/2019 got injured and are entitled to realize any amount of compensation? If so, what are the quantum?
3. Whether the deceased in OP(MV)903/2019 got injured and died in the above said accident and is entitled to realize any amount of compensation? If so, what is the quantum?
4. Whether the deceased in OP(MV)933/2019 got injured and died in the above said accident and is entitled to realize any amount of compensation? If so, what is the quantum?
5. Who is liable to compensate the claimants?
6. Reliefs and costs?

EVIDENCE:--

7. The claimants' evidence consists oral testimony of PW1 to PW4 and Ext.A1 to Ext.A29. The respondents did not adduce any evidence.

8. Heard both sides.

9. **Issue No.1 in both cases: --** The said issues are considered and answered together.

10. The claimants impute the cause of accident was the negligent driving of the offending vehicle. The claimants produced the connected criminal case records of crime No.1146/20185 of Pattanakkadu Police Station to prove the negligence of the 1st respondent. Ext.A1 is the copy of

FIR. Ext.A2 is the copy of FIS. Ext.A3 is the copy of scene mahazar. Ext.A5 is the copy of motor vehicle inspection report. Ext.A7 is the copy of final report. The final report stands filed against the 1st respondent u/s.279,338 &304 A of IPC . In the final report, it is specifically stated that at the relevant time of accident the driver, the first respondent herein, drove the vehicle at a high speed and in a rash and negligent manner. Thereby, the accident occurred. Therefore, negligence on the part of the 1st respondent was established by the production of final report. The final report proves that the cause of accident was the negligent driving of the 1st respondent.

11. In ***New India Assurance Co. Ltd. v. Pazhani Ammal [2012 ACJ 1370: 2011 (3) KLT 648]***, the Hon'ble High Court *held that production of police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim u/s. 166. If any one of the parties did 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 case where 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.*

12. On the basis of the above discussion, this court finds that the claimant succeeded to prove that the accident occurred due to the negligent driving of the offending vehicle by the 1st respondent. Issue No. 1 is answered in favour of the claimants.

13. **<u>Issue No.2 in O.P.(MV)711/2019:</u>-**The claimant pleaded that she had sustained injuries and become physically disabled due to the accident.

14. The claimant produced treatment records for proving that she had sustained injuries and availed treatment. Ext.A13 is the copy of wound certificate issued from KVM, Hospital, Cherthala. Ext.A14 is the discharge summaries. It contains three discharge summaries. The first discharge summary issued from Medical Trust Hospital, Ernakulam would prove that the claimant underwent inpatient treatment from 20.12.2018 to 21.12.2018(2 days IP). The document would show that the claimant sustained **left high parietal sub dural hemorrhage, right ulna and radius fracture and left tibia fibula fracture.** The 2nd discharge summary would show that the claimant underwent inpatient treatment for 3 days from 22.12.2018 to 24.12.2018 at Travancore MCH, Kollam. She was advised for surgery. But bystanders were not willing and she was discharged at request without any further management. Thereafter, she was admitted at Vijaya Hospital and underwent inpatient treatment for 6 days from 19.01.2019 to 25.01.2019. The claimant was treated with external fixation. Bone grafting was done. Ext.A15 is the OP ticket issue from District Hospital, Kollam. The above documentary evidence shows that the claimant had sustained the above mentioned injuries.

15. The claimant claims that she suffers disability. Ext.A12 is the disability certificate issued by Dr. Ayyappan Pillai. It certifies that she has 32% disability.

16. The learned standing counsel appeared for 3rd respondent objected on taking such percentage of disability. The counsel argued that it is an exorbitant percentage of disability. Therefore, the claimant adduced oral evidence of the Doctor, who issued Ext.A12 certificate. The Doctor was examined as PW2 stated that he had issued Ext.A12 certificate. But in the

cross examination, PW2 stated that he had not treated the patient and the patient approached him only to assess the disability. Thereby, he issued the disability certificate.

17. The guidelines how to assess disability in motor accident claim cases are laid down in **Rajkumar v. Ajayakumar and another, reported in 2011 (1) SCC 343.** The Hon'ble Supreme Court held that *the extent of disability of a limb (or part of the body) expressed in terms of percentage of the total functions and that limb, obviously cannot be assumed to be the extent of disability of the whole body. The Tribunal should not mechanically apply percentage of permanent physical disability as percentage of economic loss or loss of earning capacity, but must assess functional disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability therein. Unless the doctor who treated the claimant or who medically examined and assess the extent of disability of claimant, is tendered for cross-examination with reference to the certificate. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of permanent disability and what he could not do as a result of the permanent disability. The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (I) The claimant is totally disabled from earning any kind of livelihood or (II) Whether inspite of the permanent disability, claimant could still effectively carry on the activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continued to earn his livelihood.*

18. On perusal of records, the claimant has not filed any

application before this tribunal to refer her before a competent medical board for assessment of the whole body disability of the claimant. The claimant obtained the disability certificate in her wish by approaching PW2. To a court question, PW2 stated that he has not constituted any medical board as per the guidelines prescribed by the Government. On reading of the certificate, it could be seen that there is no medical board constituted to assess the disability. The disability calculated by PW2 is not properly explained by him in the cross examination. Mere recording the percentage cannot be considered as the whole body disability of the claimant. A reading of Ext.A12, the claimant sustained left high parietal sub dural hemorrhage. The present Doctor who issued Ext.A12 is an Orthopedic Surgeon. He is not a faculty to assess the neurological disability. PW2 assessed the disability based on the fracture both bone right forearm and fracture both bone right leg. It cannot be considered as the whole body disability.

19. In this case, the claimant has not adduced any further evidence for proving any complications she had suffered due to the injuries arising out of a motor accident after completing the treatment in initial period. No other treatment records leading to a conclusion that this injury caused severe disability to the claimant preventing her from doing any other works or day to day avocation. Having considered the facts and circumstances, this tribunal finds that the claimant had sustained left high parietal sub dural hemorrhage, right ulna and radius fracture and left tibia fibula fracture. The disability certificate would not show that whether it is a whole body disability. The nature of assessment would prove that it is a locomotor disability and limbs only. While converting it into a whole body disability, it

has come down. When doctors assess permanent disability, they typically express it as a percentage of the whole body or a specific limb. A disability certificate stating 32% permanent disability of the left lower limb does not equate to 32% whole-body disability. The percentage of disability for a limb or body part represents the loss of function specific to that area, not the entire body.

20. For instance, if an individual has 60% permanent disability in their right hand and 80% in their left leg, it does not mean their whole-body disability is 140% (80% + 60%). When multiple body parts have different percentages of disability, the total whole-body disability cannot exceed 100%. The cumulative effect of multiple disabilities must be assessed holistically to determine the overall percentage of whole-body disability.

21. In this case, she has a 32% disability of the left lower limb. When converting to the whole-body disability and functional disability, this will be a lesser percentage. Having considered the occupation of the claimant as a tailor and the injuries sustained, it would prove that she is suffering from functional disability. Therefore, the functional disability of the claimant fixed in this case is 22%.

22. The petition describes the claimant was aged 50 years. Ext.A11 Aadhar card would show the date of birth of the claimant was in the year 1965. The accident was in the year,2018. Therefore, the claimant was aged 53 years and the corresponding multiplier is '11'***[as per Sarala Varma v. Delhi Transport Corporation [AIR 2009 SC 3104]***. The claimant claims that she was a tailor by profession and was earning Rs.16,000/- per month. In the absence of any evidence to prove the income of the claimant and

having considered the age, occupation as a tailor, Rs.11,500/- is fixed as the notional income of the claimant as per the principles settled in ***Ramachandrappa vs Manager, Royal Sundaram Alliance Insurance Company Ltd., 2011 (13) SCC 236***. Compensation towards disability is fixed at **11,500 x 12 x 11 x 22/100 =3,33,960/-**.

23. The nature of injuries, period of treatment and medical records reveal that the claimant had been prevented from going for job for a period of 6 months. Therefore, compensation for loss of actual income for 6 months is granted and the amount is fixed at **Rs.69,000/**- and the same is awarded towards compensation for loss of actual income.

24. Ext.A10 is the way bills for Rs.17,200/-. Eventhough it is marked subject to proof, the claimant gave oral testimony. In the chief affidavit she stated that it is the way bill. She met expenses for transportation for her treatment purposes. Having considered her treatment at Ernakulam, Kollam and Kottarakkara, this tribunal finds that these way bills are reasonable and this tribunal accepts the same. Therefore, this Court allows **Rs.17,200**/- as the transportation expenses.

25. The claimant produced Ext.A16 and Ext.A16(a) are medical bills for **Rs.4,48,537/-** and that amount is awarded for medical expenses.

26. Considering the nature of injuries, duration of the treatment, mental and physical sufferings from the accident, this Court finds that the claimant had suffered pain and sufferings. This Court awards compensation of **Rs.1,00,000**/- for pain and suffering undergone by the claimant.

27. The claimant had undergone inpatient treatment for 11 days. For considering bystander's expense of this period, an amount of **Rs.4,400/**- is awarded @ Rs.400/- per day. During this period, he used to have taken

nutritious food, fruit, milk etc. Considering this aspect compensation for extra nourishment is fixed at **Rs.2,750/**- @ 250/- per day.

28. The claimant would definitely be suffering from loss of amenities. This injury would reduce the enjoyment and activities of the claimant from what were the daily avocations done by the claimant prior to the accident. So, the claimant is entitled to get **Rs.66,792/-** towards compensation for loss of amenities.

29. The compensation due to the claimant is shown below in the tabular column:-

Sl. No.	**Head of Claim**	**Amount claimed (in Rs.)**	**Amount awarded (in Rs)**	**Basic vital details in a nut shell**
1.	Loss of earnings	80,000	69,000	Actual loss of income for 6 months.
2.	Partial loss of earnings	NIL	NIL	
3.	Transport to hospital	27,500	17,200	As per Ext.A10
4.	Extra nourishment	18,000	2,750	250x11
5.	Damage to clothing	1,500	NIL	
6.	Medical expenses and bystander's expenses.	5,72,000	4,48,537 4,400	As per Ext.A16 and Ext.A16(a) 400x11
8.	**Compensation for** pain and sufferings	2,41,000	1,00,000	
9.	Permanent disability	10,36,000	3,33,960	**11500x12x11x22/100**
10.	Loss of amenities enjoyment in life.	2,25,000	66,792	
11.	Future treatment	1,00,000	NIL	
11.	**Total**	**23,01,000/- ltd to 23,00,000/-**	**10,42,639/- rounded off to 10,43,000/-**	**Rs.10,43,000/-with 8% interest per annum from 03.06.2019 till realization**

30. It is held that the claimant is entitled to recover compensation of **Rs.10,43,000/-(Rupees ten lakh forty three thousand only)**. Issue No. 2 in OP(MV) 711/2019 is answered in favour of the claimant to the above extent.

31. **Issue No.3 in OP(MV) 903/2019:-** Ext.A4 is the inquest report. Ext.A6 is the copy of postmortem certificate issued from General Hospital, Ernakulam dated 23.12.2018. Therein, it was noted that the deceased died due to head injury. Ext.A8 is the copy of wound certificate.

32. On a combined reading of the police records referred above and the postmortem certificate mentioned herein, it is sufficient to prove that the deceased died due to the injuries sustained from the above motor vehicle accident. No contra evidence is adduced by the respondents to prove otherwise. Issue No. 3 is answered in favour of the claimants.

33. The petition describes the claimants are the legal representatives and dependents of the deceased. The first claimant is the husband, the 2nd claimant is the mother and the 3rd claimant is the sister of the deceased. The first claimant, the husband and 2nd claimant the mother of the deceased are the dependents and they are entitled to get compensation. This tribunal finds that the 3rd claimant, the sister is not the dependent of the deceased. Therefore, she is not entitled to get compensation.

34. The petition describes, the deceased was a pharmacist by profession. For proving her occupation, the claimant adduced oral evidence of PW3. PW3 is the Doctor who was the Director of Kunnikkodu Thettikkuzhy Hospital. He stated that the deceased was a registered pharmacist and was working in their hospital from 01.04.2018 and her

salary was Rs.12,000/- and also gave Rs.4,000/- for using her pharmacy license and also gave Rs.2,000/- as allowance. Eventhough he adduced oral evidence but did not produce any documentary evidence to prove the salary of the deceased. Ext.A29 is the pharmacy certificate. It is proved that the deceased was a qualified pharmacist. Ext.A17 is the salary certificate of the deceased. As per salary certificate, the deceased drawn Rs.12,000/- as salary. No other certificate was produced for proving that the deceased was earning more than Rs.12,000/-. Therefore, Ext.A7 salary certificate is accepted and her monthly income is fixed as Rs.12,000/-.

35. The deceased was aged 22 years. Therefore, the corresponding multiplier is "18"***[as per Sarala Varma v. Delhi Transport Corporation [AIR 2009 SC 3104]***.

36. As per the decision of the ***Hon'ble Supreme Court in Sarala Varma case*** referred above, loss of dependency has to be calculated. Since the deceased was aged 22 years, 40 % of the monthly income is added as future prospects going by the dictum in N***ational Insurance Co. Ltd. v. Pranay Sethi*** reported in **2017 ACJ 2700.** Thus the annual income will come to **Rs.2,01,600/-(12000+40% of 12,000 x12)**. As there are two dependents, 1/3rd of the amount has to be deducted as the amount, which the deceased would have spent for her personal and living expenses. After deducting 1/3rd amount, the annual income will come to Rs.92,400. The said amount has to be fixed as multiplicand. The multiplicand when multiplied with the multiplier comes to an amount as **Rs.24,19,200/- (Rs.1,34,400 x 17)**. The said amount is the compensation for the loss of dependency.

37. The claimants entitled to compensation on account of loss

of estate and funeral expenses. Following the decision of ***National Insurance Co. Ltd. v. Pranay Sethi*** reported in **2017 ACJ 2700** and others referred above, this Court award **Rs.18,000**/- each towards compensation for loss of estate and funeral expenses to the claimants.

38. In ***Magma General Insurance Co. Ltd. v. Nanu Ram and others reported in 2018 (18) SCC 130***, the Hon'ble Supreme Court held that *"in legal parlance, consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium. The right to consortium would include the companionship, care, help, comfort, guidance, solace and affection of the deceased which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased's spouse."*

39. *"Parental consortium is granted to the child attend the premature death of parent for loss of parental protection, affection, society, discipline, guidance and training."*

40. *"Filial consortium is a right of the parents to compensation in the case of an accidental death of a child, an accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to loss their child during their life time. Children are valued for their love, affection, companionship and a role in the family unit. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships."*

41. *The said principle has been confirmed by the Hon'ble Supreme Court of India in* ***United India Insurance Company Ltd.v Satinder Kour @ Satwinder Kour and others AIR 2020 SC 3076****. The Hon'ble High court of Kerala in* ***Sreeja and others v. Rajasekara and others, MACA No. 4475/19*** *following the decision of Magma General*

Insurance Co.Ltd., awarded compensation under the head of filial consortium.

42. In the present case, the first claimant is the husband of the deceased. Following the above principles, this tribunal awards **Rs.48,000/**- as spousal consortium.

43. In the present case, the 2nd claimant is the mother of the deceased. Following the above principles, this tribunal awards **Rs.48,000/-** as the filial consortium.

44. The claimants would have made transportation charges when the deceased was taken to hospital and the body was brought back to home. Considering these aspects, this tribunal awards **Rs.5,000/-** for transportation charges.

45. The claimants produced Ext.A19 medical bills for Rs. 2,65,198/-. The 3rd respondent filed objection stating that bill nos.1 and 4 cannot be accepted as they are advance bills and bill no.9 is the ambulance bill and that cannot be considered as the medical expenses. Bill No.13 is not the original discharge bill. Therefore, it cannot be considered in evidence.

46. On perusal of records, the original discharge bill is not produced by the claimants. Patient's account statement issued by the hospital is produced. It cannot be considered as the discharge bill. Therefore, the objection raised by the 3rd respondent is sustainable. Because the parties used the original bills for some other purposes and they have not produced the original bills before this tribunal. One of the bills are duplicate. Therefore, after deducting the same, the balance amount of **Rs.16,102/**- is awarded for medical expenses.

47. The compensation due to the claimants is shown below in the tabular column:-

Sl No.	Head of claim	Amount claimed (in Rs.)	Amount awarded (in Rs.)	Basic vital details in a nutshell
1.	Transport to hospital	21,000	5,000	
2.	Damage to clothing	3,000	NIL	
3.	Extra nourishment	2,000	NIL	
4.	Funeral expenses	52,000	18,000	
5.	Medical expenses	5,20,000	16,102	As per Ext.A19
6.	Pain and sufferings	2,30,000	NIL	
7.	Loss of dependency	25,92,000	24,19,200	**1344000 x18**
8.	Loss of love and affection	3,00,000	NIL	
9.	Filial consortium spousal consortium	1,60,000	48,000 48,000	
10.	Loss of estate	1,60,000	18,000	
11.	**Total**	**40,38,000/-ltd to 40,00,000/-**	**25,72,302/- ltd to 25,72,500/-**	**Rs.25,72,500/- with 8% interest per annum from 01.07.2019 till realization**

48. It is held that the claimants 1 and 2 are entitled to recover compensation of **Rs.25,72,500/-(Rupees twenty five lakh seventy two thousand and five hundred only)** in the ratio of 50:50. Issue No. 3 in OP(MV)903/2019 is answered in favour of the claimants to the above extent.

49. **Issue No.4 in OP(MV) 933/2019:-**Ext.A22 is the copy of inquest report. Ext.A24 is the copy of wound certificate. Ext.A25 is the copy of postmortem certificate issued from General Hospital, Ernakulam dated 22.12.2018. Therein, it was noted that the deceased was died due to head injury.

50. On a combined reading of the police records referred above and the postmortem certificate mentioned herein, it is sufficient to prove that the deceased died due to the injuries sustained from the above motor vehicle accident. No contra evidence is adduced by the respondents to prove otherwise. Issue No. 2 is answered in favour of the claimants.

51. The petition describes the claimants are the legal representatives and dependents of the deceased. The first claimant is the wife, the 2nd claimant is the daughter and the 3rd claimant is the mother of the deceased. There is no dispute regarding the relationship between the claimants and the deceased. Therefore, this tribunal finds that they are the dependents of the deceased and are entitled to get compensation.

52. The petition describes, the deceased was a Manager, Dhanya Super Market, Punalur. For proving his occupation, the claimant adduced oral evidence of PW3. PW3 is the partner of Dhanya Supermarket. He stated that the deceased was working as a supervisor in the supermarket and he was drawing Rs.21,000/- as monthly salary. He further stated that the deceased was not a temporary staff. Eventhough he adduced oral evidence but did not produce any documentary evidence to prove the salary of the deceased. In the absence of any evidence to prove the income of the claimant and having considered the age, occupation and the year of accident, Rs.11,500/- is fixed as the notional income of the claimant as per the principles settled in ***Ramachandrappa vs Manager, Royal Sundaram Alliance Insurance Company Ltd., 2011 (13) SCC 236***.

53. The deceased was aged 59 years.Ext.A27 copy of ID card of the deceased would show his date of birth was on 27.10.1955. The accident was on 20.12.2018. Therefore, the deceased was aged 63 years

and the corresponding multiplier is "7"***[as per Sarala Varma v. Delhi Transport Corporation [AIR 2009 SC 3104]***.

54. As per the decision of the ***Hon'ble Supreme Court in Sarala Varma case*** referred above, loss of dependency has to be calculated. Since the deceased was aged 63 years, no amount is added as future prospects going by the dictum in N***ational Insurance Co. Ltd. v. Pranay Sethi*** reported in **2017 ACJ 2700.** Thus the annual income will come to **Rs.1,38,000/-.**As there are three dependents, 1/3rd of the amount has to be deducted as the amount, which the deceased would have spent for her personal and living expenses. After deducting 1/3rd amount, the annual income will come to Rs.92,400. The said amount has to be fixed as multiplicand. The multiplicand when multiplied with the multiplier comes to an amount as **Rs.6,44,000/-(Rs.92,000 x 7)**. The said amount is the compensation for the loss of dependency.

55. The claimants entitled to compensation on account of loss of estate and funeral expenses. Following the decision of ***National Insurance Co. Ltd. v. Pranay Sethi*** reported in **2017 ACJ 2700** and others referred above, this Court award **Rs.18,000**/- each towards compensation for loss of estate and funeral expenses to the claimants.

56. In ***Magma General Insurance Co. Ltd. v. Nanu Ram and others reported in 2018 (18) SCC 130***, the Hon'ble Supreme Court held that *"in legal parlance, consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium. The right to consortium would include the companionship, care, help, comfort, guidance, solace and affection of the deceased which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased's spouse."*

57. *"Parental consortium is granted to the child attend the premature death of parent for loss of parental protection, affection, society, discipline, guidance and training."*

58. *"Filial consortium is a right of the parents to compensation in the case of an accidental death of a child, an accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to loss their child during their life time. Children are valued for their love, affection, companionship and a role in the family unit. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships."*

59. *The said principle has been confirmed by the Hon'ble Supreme Court of India in* ***United India Insurance Company Ltd.v Satinder Kour @ Satwinder Kour and others AIR 2020 SC 3076****. The Hon'ble High court of Kerala in* ***Sreeja and others v. Rajasekara and others, MACA No. 4475/19*** *following the decision of Magma General Insurance Co.Ltd., awarded compensation under the head of filial consortium.*

60. In the present case, the first claimant is the wife of the deceased. Following the above principles, this tribunal awards **Rs.48,000/**- as spousal consortium.

61. In the present case, the 2nd claimant is the daughter of the deceased. Following the above principles, this tribunal awards **Rs.48,000/-** as the parental consortium.

62. In the present case, the 3rd claimant is the mother of the deceased. Following the above principles, this tribunal awards **Rs.48,000/-** as the filial consortium.

63. The claimants would have made transportation charges

when the deceased was taken to hospital and the body was brought back to home. Considering these aspects, this tribunal awards **Rs.5,000/-** for transportation charges.

64. The claimants produced Ext.A26 medical bills for Rs.4,58,561. The 3rd respondent filed objection stating that bill no.3 is the ambulance bill and that cannot be considered as the medical expenses. The bill No.2 includes bill nos.1 and 4 advance bills. Bill No.8 is the detailed bill of bill No.7.

65. On perusal of records,this tribunal finds that the objection raised by the 3rd respondent is sustainable. Therefore, after deducting the same, the balance amount of **Rs.2,18,460/**- is awarded for medical expenses.

66. The compensation due to the claimants is shown below in the tabular column:-

Sl No.	**Head of claim**	**Amount claimed (in Rs.)**	**Amount awarded (in Rs.)**	**Basic vital details in a nutshell**
1.	Transport to hospital	14,000	5,000	
2.	Damage to clothing	2,000	NIL	
3.	Extra nourishment	2,000	NIL	
4.	Funeral expenses	52,000	18,000	
5.	Medical expenses	3,40,000	2,18,460	As per Ext.A26
6.	Pain and sufferings	1,60,000	NIL	
7.	Loss of dependency	25,92,000	6,44,000	**92000x7**
8.	Loss of love and affection	2,00,000	NIL	

9.	Filial consortium spousal consortium parental consortium	1,00,000	48,000 48,000 48,000	
10.	Loss of estate	90,000	18,000	
11.	**Total**	**23,02,000/-ltd to 20,00,000/-**	**10,47,460/- ltd to 10,47,500/-**	**Rs.10,47,500/- with 8% interest per annum from 05.07.2019 till realization**

67. It is held that the claimants 1 to 3 are entitled to recover compensation of **Rs.10,47,500/-(Rupees ten lakh forty seven thousand and five hundred only)** in the ratio of 50:25:25. Issue No. 4 in OP(MV)933/2019 is answered in favour of the claimants to the above extent.

68. **Issue No.5 in all cases: -**The said issues are considered and answered together.

69. The petition describes that the 1st respondent,driver, who was the tortfeasor, is primarily liable. The 2nd respondent, the registered owner has vicarious liability. The 3rd respondent admitted the insurance policy coverage. All are jointly and severally liable to pay compensation to the claimants. The 3rd respondent did not adduce any evidence to prove violation of policy conditions. As per policy, the 3rd respondent being the insurer has to indemnify the claim against 2nd respondent. Therefore, the 3rd respondent is liable to pay compensation. Issue No. 3 is answered in favour of the claimants.

70. In the result, the O.P(MV)711/2019 is allowed as follows: –

1. The claimant is allowed to realize an amount of **Rs.10,43,000/-(Rupees ten lakh forty three thousand**

only)with interest @ 8% per annum from 03.06.2019 which is the date of this claim petition, till realization from the 3rd respondent.

2. The 3rd respondent is directed to transfer two separate cheques, for Rs.22,373/- towards court fees and Rs.23,000/- for legal benefit fund in the name of M.A.C.T payable on the claim petition.

3. The 3rd respondent shall transfer the aforesaid award amount with interest through RTGS/NEFT/any other electronic mode to the bank account of this Tribunal namely MOTOR ACCIDENT CLAIMS TRIBUNAL, SBI MAVELIKARA Branch A/c No.42770025549 and IFSC code SBIN0008645 within two months as per the mandate of Circular 1/2024 Dated 06.03.2024 of the Hon'ble High Court of Kerala. On such deposit, the amount shall be credited to the bank account of the claimant by way of electronic fund transfer. claimant is permitted to withdraw the amount.

4. The claimant shall furnish attested copy of the Pan card and the relevant page of his/her bank pass book having details of the bank account number and IFSC Code of Bank branch to 3rd respondent and before this Tribunal within 7 days from the date of this award failing which the interest on compensation shall cease to run from the date of default.

5. This office is directed to issue a copy of relevant page of the bank passbook of the claimant to 3rd respondent at the time of issuing the copy of award.

6. The parties shall bear their respective costs.

71. In the result, the O.P(MV)903/2019 is allowed as follows: –

1. The claimants 1 and 2 are allowed to realize an amount of **Rs.25,72,500/-(Rupees twenty five lakh seventy two thousand and five hundred only)** in the ratio **50:50** with interest @ 8% per annum from 01.07.2019 which is the date of this claim petition, till realization from the 3rd respondent.
2. The 3rd respondent is directed to transfer two separate cheques,one for Rs.39,373/- towards court fee and Rs.40,000/- towards legal benefit fund in the name of M.A.C.T., Mavelikara payable on the claim petition.
3. Out of the compensation amount, the first claimant who is husband of the deceased shall be entitled to 50% share and the 2nd claimant who is the mother of the deceased shall be entitled to 50% share.
4. The 3rd respondent shall transfer the aforesaid award amount with interest through RTGS/NEFT/any other electronic mode to the bank account of this Tribunal namely MOTOR ACCIDENT CLAIMS TRIBUNAL, SBI MAVELIKARA Branch A/c No.42770025549 and IFSC code SBIN0008645 within one month as per the mandate of Circular 1/2024 Dated 06.03.2024 of the Hon'ble High Court of Kerala. On such deposit, the amount shall be credited to the claimant by way of electronic fund transfer.
5. The claimant shall furnish attested copy of the Pan card and the relevant page of his/her bank pass book having details of the bank account number and IFSC Code of Bank branch to 3rd

respondent and before this Tribunal within 7 days from the date of this award failing which the interest on compensation shall cease to run from the date of default.

6. The deposit of the award amount shall be subjected to deduction of interim award amount, if any allowed and deposited.
7. This office is directed to issue a copy of relevant page of the bank passbook of the claimant to 3rd respondent at the time of issuing the copy of award.
8. The parties shall bear their respective costs.

72. In the result, the O.P(MV)933/2019 is allowed as follows: –

1. The claimants 1 to 3 are allowed to realize an amount of **Rs.10,47,500/-(Rupees ten lakh forty seven thousand and five hundred only)** in the ratio **50:25:25** with interest @ 8% per annum from 05.07.2019 which is the date of this claim petition, till realization from the 3rd respondent.
2. The 3rd respondent is directed to transfer two separate cheques,one for Rs.19,373/- towards court fee and Rs.20,000/- towards legal benefit fund in the name of M.A.C.T., Mavelikara payable on the claim petition.
3. Out of the compensation amount, the first claimant who is wife of the deceased shall be entitled to 50% share, the 2nd claimant who is the daughter of the deceased shall be entitled to 25% share and the 3rd claimant who is the mother of the deceased shall be entitled to 25% share.
4. The 3rd respondent shall transfer the aforesaid award amount

with interest through RTGS/NEFT/any other electronic mode to the bank account of this Tribunal namely MOTOR ACCIDENT CLAIMS TRIBUNAL, SBI MAVELIKARA Branch A/c No.42770025549 and IFSC code SBIN0008645 within one month as per the mandate of Circular 1/2024 Dated 06.03.2024 of the Hon'ble High Court of Kerala. On such deposit, the amount shall be credited to the claimant by way of electronic fund transfer.

5. The claimant shall furnish attested copy of the Pan card and the relevant page of his/her bank pass book having details of the bank account number and IFSC Code of Bank branch to 3rd respondent and before this Tribunal within 7 days from the date of this award failing which the interest on compensation shall cease to run from the date of default.
6. The deposit of the award amount shall be subjected to deduction of interim award amount, if any allowed and deposited.
7. This office is directed to issue a copy of relevant page of the bank passbook of the claimant to 3rd respondent at the time of issuing the copy of award.
8. The parties shall bear their respective costs.

[Dictated to the Confidential Assistant, transcribed by her, Corrected by me and pronounced in open court, this the 23rd day of January,2025.]

Sd/-
K N AJITH KUMAR
MOTOR ACCIDENTS CLAIMS TRIBUNAL

Appendix :

Exhibits for the Petitioner:

A1	21.12.2018	Copy of FIR
A2	21.12.2018	Copy of FIS
A3	22.12.2018	Copy of Scene Mahazar
A4	22.12.2018	Copy of Inquest Report
A5	10.01.2019	Copy of MVI Report
A6	23.12.2018	Copy of Post-mortem Certificate
A7	21.12.2018	Copy of Charge Sheet
A8	20.12.2018	Copy of Wound Certificate
A9	21.12.2018	Copy of Discharge Summary
A10	20.12.2018	Way Bills
A11		Copy of Aadhar
A12	07.06.2023	Disability Certificate
A13	28.12.2018	Copy of Wound Certificate
A14	21.12.2018	Discharge Cards
A15	12.01.2019	O P Tickets
A16		Medical Bills
A16(a)		Medical Bills
A17	12.02.2019	Salary Certificate
A18	23.12.2018	e Ticket Receipt
A19		Medical Bills
A20	21.12.2018	Way Bill
A21		Copy of ID Card
A22	22.12.2018	Copy of Inquest Report
A23	21.12.2018	Treatment summary
A24	20.12.2018	Copy of Wound Certificate
A25	22.12.2018	Post-mortem Report

A26		Medical Bills
A27		Copy of ID Card
A28 series		e-challan, Service records etc.
A29	25.10.2017	Pharmacy Certificate

<u>Exhibits for the Respondents</u>: Nil

<u>Witness for the Petitioner</u>:

PW1	04.04.2024	Zeenath
PW2	09.10.2024	Ayyappan Pillai
PW3	09.10.2024	Dr. Firose Y
PW4	09.10.2024	Muhammed Faiz A

<u>Witness for the Respondent:</u> Nil

Id/-
MOTOR ACCIDENTS CLAIMS TRIBUNAL