IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MANJERI

Present:- Smt. Rajitha.T.H, Motor Accidents Claims Tribunal, Judge.

Thursday, the 27th day of February, 2025

OP (MV) No. 1181/2022

Between:-

1. Saifunneesa, 43 Years, W/o. Late Musthafa.P.T, Poolakka Purayi House, Karippur (P.O), Pallikkal Village, Kondotty Taluk, Malappuram District – 673638.
2. Irshad.P.T, 26 Years, S/o. Late Musthafa.P.T, Pulakkattu Purai House, Palapetty, (P.O) Karippur, Pallikkal Village, Kondotty Taluk, Malappuram District – 673638.
3. Anshid.P.T, 20 Years, S/o. Late Musthafa.P.T, Poolakkattil Purayi House, Palapetti, Pallikkal Village, Karippur(P.O), Kondotty Taluk, Malappuram District – 673638.
4. Fathima Fitha.P.T, 15 Years (D.O.B – 15-06-2007) (Minor) represented by guardian/Mother Saifuneesa, D/o. Late Musthafa.P.T, Poolakattu Purayi House, Palpetty, Pallikkal Village, Karippur (P.O), Kondotty Taluk, Malappuram District – 673638.

: **Petitioners**

By: Adv. V. Rafeeque

And:-

1. Lukumanul Hakkeem.N, 29 Years, S/o. Hassankutty Musliyar.N, Nayattil House, Parambilpadi, (P.O) Vengara, Tirurangadi Taluk, Malappuram District – 676304. (Driver Cum Owner)
2. IFFCO TOKIO General Insurance Company Limited, 1st Floor, Plus Point Building, Near ICICI Bank, Mannarkkad Road, (P.O) Perinthalmanna, Malappuram District – 679322. (Insurer)

: **Respondents**

R1	:	**Exparte**
R2	:	**Adv. T.P. Ramachandran**

Claim	**₹50,00,000/-**
Court Fee Payable	₹49,372.50/-+5/-
Court fee paid	5/-
LBF Payable	₹50,000/-
Application Presented on	10-10-2022

This petition coming on this day for final hearing before me and upon perusing the records and on hearing the arguments, this Tribunal passed the following :-

AWARD

1. This is a petition filed u/s. 166 of MV Act 1988 claiming compensation of ₹ 50,00,000/- (Rupees Fifty Lakhs Only) for the death of Musthafa Pavuthodika, who died in a motor vehicle accident happened on 31-03-2022. The petitioners are legal heirs of the deceased, who met with the above said accident. The petitioners are the widow and children of the deceased.

2. According to the petitioners on 31-03-2022 by around 15.45 hours the deceased was riding Motor Cycle KL-65/P-556 from Kunnumpuram to Kadappadi side. When he reached at the spot of accident, the Motor Cycle KL-65/M-3187 which was parked on the road side suddenly took "U Turn" by the first respondent in a most rash and negligent manner and hit against the deceased's Motor Cycle and the deceased sustained grievous injuries and succumbed to injuries on 06-04-2022. According to the petitioners, the deceased was a Soap Company Manager in RJ Soap Company, Kadappadi aged 50 years with an income of Rs. 30,000/- per month. The petitioners claimed a total sum of Rs.50,00,000/- as compensation under various heads.

3. According to the petitioners the accident was solely due to the rashness and negligence of the 1st respondent. The 1st respondent was also the owner of the offending vehicle. The 2nd respondent is its insurer. The respondent are liable to compensate them.

4. In response to summons, Respondent No. 1 called absent and hence set exparte. R2 entered appearance and filed written statement.

5. R2 denied the allegations in the petition. This respondent submitted that Motor vehicle bearing No.KL-65/M-3178 was insured with the company at the material time. The accident happened due to the rash and negligent riding of the deceased. There is a 7 days delay for lodging the FIR. This respondent submits that the first respondent, who has driven the vehicle at the time of accident had no valid driving license and police charge against him under section 3(1) of M.V.Act. Hence this respondent denies our liability to pay compensation to the petitioner. The averments regarding the injuries, treatment availed by the petitioner, monthly income, age, occupation, etc., are denied. The amount claimed is excessive and without any basis. The petition is liable to be dismissed.

6. From the pleadings the following issues arise for consideration:-

ISSUES

1. *Whether the accident occurred due to the rash and negligent driving of the motor cycle bearing number KL-65/M-3187 by the 1st respondent?*
2. *Whether the petitioners are entitled to get any compensation? If so what is the quantum?*
3. *Who are all liable to pay the compensation?*

7. Exhibits A1 to A10 are marked on the side of the petitioner. Ext.B1 policy were marked on the side of the respondents. Heard both sides.

ISSUE No. 1 :

8. Ext. A1 is the copy of the F. I. R, Ext. A2 is the Final Report and Ext. A3 is the Postmortem certificate. From Ext. A2 charge sheet it is seen that the police after instigation found that the deceased died due to the accident occurred due to the negligence of R1. This is an indication regarding the cause of the accident. In the absence of evidence to the contrary Ext. A2 charge sheet is to be relied for determining the cause of accident. Relying on this document it can be safely concluded that the accident was due to the negligence of the 1st respondent. As stated supra I hold that the accident was due to the rashness and negligence of R1. I am fortified this view by the decision rendered by Honourable High Court of Kerala in ***New India Assurance Co. Ltd. Vs. Pazhaniyammal*** reported in ***2011 (3) KLT 648.*** Issue found accordingly.

ISSUE 2

9. Ext. A4 is the family membership certificate. From this document it is seen that petitioners are the widow and children of the deceased. Hence, it can be safely concluded that they are the legal representatives and heirs of the deceased. They are entitled to get compensation.

10. The main head under which the compensation is claimed is under the head loss of dependency. According to the petitioners the deceased was a Soap Company Manager in RJ Soap Company, Kadappadi with an income of Rs.30,000/- per month. But there is no evidence to prove the same. Hence, his income can be fixed notionally. In ***Ramachandrappa Vs. Manager Royal Sundharam Alliance Insurance Company Limited*** reported in ***2011 (3) SCC 236*** the Apex court reckoned in the monthly income of a coolie (manual labourer) who met with a road accident in the year 2004 at the age of 35 years notionally as Rs. 4,500/-. In ***Sayed Sadiq & Others Vs. Division manager United India Insurance Co. Ltd 2014***

(2) SCC 735 taking note of the earlier decision in Ramachandrappa is case supra, the Apex court reckoned in the monthly income of a vegetable vendor who met with a road accident in the year 2008 at the age of 24 years notionally fix as Rs. 6,500/-. In ***Ulahannan Vs. Rajeesh and Others (ILR 2020 (2) Kerala 295)*** the Honourable High Court of Kerala reckoned a monthly income of a coolie (manual labourer) who met with a road accident in the year 2013 at the age of 53 years notionally fix as Rs. 9,000/-. Considering the above 3 cases it is seen that there is an increase of Rs. 500/- per year in the notional income. So the same increase can be given in the present case also. The present case took place in the year 2022. I fix the notional income of the petitioner as Rs. 13,500/-.

11. As per Ext. A3 postmortem certificate, the age of the deceased was 50 years at the time of the accident.

12. In the case ***National Insurance Company Vs Pranay Sethi and others 2017 (4) KLT 662 SC*** the Constitution Bench of Honourable Apex Court observed that the deceased who was self-employed or on a fixed salary, an addition of 25% of the established income should be added to the income where the deceased was between the age of 40-50 years. In the present case, the notional income of the petitioner is Rs. 13,500/-. Since he was aged 50 years, 25% of the additional income can be given to him as future prospects ie., 3,375/- (13,500x25/100). So his total income will become Rs.16,875/- (13,500+3,375) per month.

13. Petitioners are the widow and children of the deceased. Hence, they are considered as the dependants of the deceased. The Hon'ble Apex court in the case ***Sarla Verma Vs Delhi Transport Corporation (2010 (2) KLT 802 (SC)*** held that where the deceased was married the deduction towards personal living expenses of deceased will be 1/4 where the number of family dependants are 4 to 6. In this case, the number of dependants are 4. The deduction would come to Rs.4219/- (16,875x1/4). After deducting

1/4 of the income towards personal expenditure, the amount of contribution of family will be Rs.12,656/- (16,875-4219). In that case also the Honourable Apex Court has calculated the multiplier table prepared by applying Susamma Thomas, Trilok Chanda and Charlie and which is elaborately explained in para. 42 of said decision. As per the table if the deceased is between the age of 46-50 years, the multiplier will be 13. Thus, the amount of loss of dependency can be calculated as Rs.19,74,336/- (12,656 x12x13). The petitioners are entitled to get a sum **of Rs. 19,74,336/- as compensation for loss of dependency.**

14. In ***National Insurance Company Vs. Pranay Sethi and Others*** *reported in* ***2017 (4) KLT 662 SC*** the Constitution bench of the Honourable Apex court held that "reasonable figures on conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amount should be enhanced at the rate of 10% in every three years." In ***Jayasree N and Others Vs. Cholamandalam MS General Insurance Company Ltd*** *reported in* ***2021 (6) KHC 163*** the Apex Court observed that the judgement in Pranay Sethi was rendered in the year 2017. Therefore, the claimants are entitled for 10% enhancement. Thus, the petitioners are entitled to get a sum of **Rs.16,500/- [15,000+(15,000x10/100)] towards loss of estate** and another sum of **Rs.16,500/- [15,000+(15,000x10/100)] towards funeral expenses.**

15. Following the dictum laid by the Honourable Apex court in the case ***Magma General Insurance Company Vs. Nanu Ram and Others (2018 ACJ 2782),*** the 1st petitioner who is the widow of the deceased is entitled to get a sum of **Rs. 44,000/- [40,000+(40,000x10/100)] as compensation for loss of Spousal consortium. Petitioners 2 to 4** who are the children of the deceased had lost their father due to the death in the accident. Hence, they are entitled to get **Rs.1,32,000/- [40,000+(40,000x10/100)]x3** as compensation for **loss of parental consortium.**

16. Petitioners are entitled to get a sum of **Rs.5,000/-** towards the amount spend for the **transportation to the hospital.**

17. The petitioners are also entitled to get a sum of **Rs. 1,000/- as compensation for loss of clothing articles** as held by the Hon'ble Supreme Court in ***National Insurance Company's*** case mentioned supra.

18. In ***Jaini and others v Raphel P. T. 2016 (2) KHC 870*** case the Honourable High Court held that even in the cases of instantaneous death pain and sufferings would be invariably present and compensation under this head is to be awarded in such cases. The division bench observed that a conventional sum of Rs. 5000/- to Rs. 15,000/- can be awarded in such cases as compensation. It is observed that a slightly higher amount can be awarded if the death was not instantaneous. Deceased died after 7 days of the accident as evident from Ext.A3. Considering this a sum of Rs. **15,000/- is to be awarded as compensation for pain and suffering.**

19. Considering the nature of injury sustained by the deceased and hospitalised for 7 days, it is only reasonable to assume that the deceased had to take extra nourishment at least for that period. Hence the petitioners are entitled to get a sum of **Rs.3,500/- (500x7) as compensation for extra nourishment.**

20. The deceased was admitted in the hospital for 7 days. Hence, the petitioners are entitled to get an amount of **Rs.3,500/- (500x7) towards the expenses of bystander.**

21. All other claims are declined for want of evidence and materials.

ISSUE 3:

22. On the basis of the above discussion the petitioners are entitled to get a total compensation **of Rs.22,11,336/- (Rounded to Rs.22,11,400/-) as compensation.** Issue found accordingly.

23. The next question to be considered is regarding the liability of the respondents to compensate the petitioners. It is already concluded that the accident happened due to the negligence of R1. R1 was also the owner of the offending vehicle at the relevant time. R2 was the insurer. R2 contended that the first respondent, who has driven the vehicle at the time of accident had no valid driving license and police charge against him under section 3(1) of M.V.Act. Hence this respondent denies our liability to pay compensation to the petitioner. The R2 has successfully proved their defence available under section 149 (2) of MV Act 1988. In ***National Insurance Company Vs. Swaran Singh 2004 (3) SCC 297*** observed that:-

> *"where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub section (7), as interpreted by this court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the 3rd party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforcible and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub section (3) of Section 168 of the Act, the insured fails to deposit the amount awarded in favour of the insurer within 30 days from the date of announcement of the Award by the Tribunal."*

Swaran Singh case was distinguished by the Apex court in three decisions. National Insurance Company Vs. Kusum and Others (2006 (4) SCC 250), Iswar Chandra and Others Vs. Oriental Insurance Company Limited and

Others (2007(10)SCC 650), Ram Babu Tiwari Vs. United India Insurance Company Limited and Others (2008 (8) SCC 165). In all there cases mentioned supra the Apex Court directed the insurer to make payment at first instance and then to recover the amount from the driver and the owner. The same dictum can be followed in this case also. The 2nd respondent being the insurer can be directed pay first and after payment they can recover the same from R1. Issue found accordingly.

24. On the basis of my finding on issues 1 and 2 this petition is to be allowed. The petitioners are entitled to get a total sum of **Rs.22,11,400/-** as compensation. Respondents are jointly and severally liable to pay the compensation to the petitioners. Considering the age and the extent of dependency of the petitioners the amount is to be apportioned among the petitioners. The 1st petitioner is entitled to get 55% of the award amount, petitioners 2 to 4 are entitled to get 15% each of the award amount.

Sl. No.	Head of Claim	Amount Claimed	Amount Awarded	Remarks
1	Income	Nil	13,500/-	
2	Future prospects		3,375/-	13,500x25%
3	Deduction towards personal expenditure		4219/-	16,875x1/4
4	Total income		12,656/-	16,875-4219
5	Multiplier		13	
6	Loss of dependency and Future prospects	43,00,000/-	19,74,336/-	(12,656 x12x13)
7	Funeral expenses	50,000/-	16,500/-	
8	Loss of estate	Nil	16,500/-	
9	Loss of consortium	2,00,000/-	1,76,000/-	44,000x4
10	Transport to Hospital	10,000/-	5,000/-	
11	Damage to clothing & Articles	5,000/-	1,000/-	
12	pain & Suffering	1,00,000/-	15,000/-	

13	Loss of love and affection	3,00,000/-	Nil	
14	Medical expenses	20,000/-		
15	Bystanders expenses	15,000/-	3,500/-	500x7
16	Extra nourishment	Nil	3,500/-	500x7
	Total Rs. 50,00,000/-)		Rs. 22,11,336/- (Rounded to Rs. 22,11,400/-)	

25. In the result this petition is allowed as follows. :

1. *Respondents are found jointly and severally liable to pay a sum of Rs.22,11,400/- (Rupees Twenty Two Lakhs Eleven Thousand and Four Hundred only) as compensation to the petitioners with interest at the rate of 8% per annum from the date of petition i.e. 10-10-2022 till the date of deposit with proportionate costs.*

2. *The 2nd respondent is directed to deposit the compensation so arrived within thirty days from the date of this Award.*

3. *The 2nd respondent shall issue 2 cheques/ DDs for Rs. 49,373/- (Rupees Forty Nine Thousand Three Hundred and Seventy Three only) and for Rs. 50,000/- (Rupees Fifty Thousand only) in favour of the M.A.C.T, Manjeri being the value of court fee and legal benefit fund.*

4. *The 2nd respondent shall deposit the entire balance amount directly into the bank account of MACT, Manjeri maintained with SBI, Manjeri Viz. Account No 42805689458 IFSC Code SBIN0070197.*

5. *It shall be the duty of the Insurance Company to produce a statement regarding the compliance of the order with the following particulars. OP No. Date of Award, Compensation Amount, Income Tax deduction at source, Bank transaction Reference No./UTR No.*

6. *On making deposit the insurance company shall submit a letter to this Tribunal enclosing a copy of bank advise in prescribed format made mentioned in High Court Circular No.01/2024.*

7. *Insurance Company shall also produce copy of payment advise to this Tribunal and serve a copy of the same on the claimant or their Advocates.*

8. *If any tax is deducted at source, the insurance company shall produce Form-16A of Income Tax Act so as to enable the petitioner to seek refund of the tax.*

9. *Office shall deposit the entire balance in the name of minor petitioner as fixed deposit till the minor petitioner attains the age of majority either in SBI, Manjeri itself or in the bank of the choice of the petitioner. Fixed deposit amount on maturity shall be credited to the account of the claimant automatically.*

10. *The office of this Tribunal shall ensure that as and when the Award amount is received in the Bank account of MACT, it shall be disbursed to the credit of the bank account of claimant directly by way of NEFT/RTGS or any other electronic mode.*

11. *The office is further directed to make necessary entries in the Cheque Issue Register or any other Registers concerned, evidencing payment of above amount to the petitioner in claim petition.*

12. *The 2nd respondent is entitled to recover the amount so paid as compensation from the respondent 1.*

(Pronounced by me in open court on this 27th day of February, 2025.)

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Appendix:-

Witness Examined for the petitioner:-Nil

Witness Examined for the Respondent-Nil

Exhibits Marked for the petitioner:-

A1	07-04-2022	Copy of F I R
A2	03-06-2022	Copy of Charge Sheet
A3	-	Copy of Postmortem Report
A4	04-05-2022	Family Membership Certificate
A5	Series	Copy of Aadhar Card of the petitioners
A6	-	Copy of Birth Certificate of Fathima Fitha
A7	Series	Copy of Bank Pass book of the Petitioners
A8	-	Copy of Aadhar Card of the deceased
A9	-	Copy of Driving Licence of the deceased
A10	Series	Copy of PAN Card of the Petitioners

Exhibits Marked for the Respondents:-

B1 - Copy of Insurance Policy

3rd party Exhibits Marked:- Nil

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Petitioner's cost allowed:-

1	Court Fee	₹21,487/-
2	Stamp on vakalath	₹5/-
3	Process Batta	₹68/-
4	Advocate fee	₹1,12,970/-
5	LBF	₹22,114/-
6	Stamp on Petitions	₹10/-
7	Stamp on Documents	₹24/-
8	Writing Charge	₹200/-
	Total	**₹1,56,878/-**

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NB: 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.

Typed by: - Suprabha

Compared by: -1. Suprabha

2. Sahadevan

~~Fair~~/Copy Award in OP (MV)No. **1181/2022**
Dated: **27-02-2025**
