

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM

Present :- Smt. Gosha C.G., M.A.C. Tribunal

Saturday 17th day of May 2025

(27th day of Vaisakha, 1947 S.E.)

ORIGINAL PETITION (MV) No.674/2022

Petitioner

- 1) Amina, aged 73 years, W/o Muhammed, Kottilingalthodi House, Poovakkode, Maruthur Post, Ongallur-I, Palakkad. PIN 679306
- 2) Seenath, aged 39 years, W/o Abdul Salam, Iriyamkunnath House, Maruthur Post, Ongallur-I, Palakkad, Pin-679306

By advocates : Adv. Surjith Kottayil & Adv. Tharun Dath
V/s

Respondents

- 1) Sabiq C, 26 years, S/o Moideen C, Cholayil house, Mundakottukkurissi, Shornur, Palakkad, Pin-679122
(Driver of KL-52-Q-5631 No: Bus)
- 2) Reshmi K S, Age not known, W/o Krishnaprakash T, Krishnalayam, Marayamangalam, Nellya, palakkad (Dt) Pin-679335
(Owner of KL-52-Q-5631 No: Bus)
- 3) The Oriental Insurance Co. Ltd, BO Tirur, CKH Building, Thazhepalam, Ponnali road, Tirur, Pin-676101.
(Insurer of KL-52-Q-5631 No: Bus. Policy No. 441005/31/2022/4990 Valid from 11-11-2021 to 10-11-2022)

R1 : Adv. M K Moideenkuty

R2 : Exparte

R3 : Adv. T Ravisankar

This petition having been finally heard on 26/04/2025 and the Tribunal on 17/05/2025 passed the following.

AWARD

This is an application for compensation filed by the legal heirs of deceased Muhammed, who died in a motor vehicle accident under section 166(1) (c) of the Motor Vehicles Act, 1988.

2. The 1st petitioner is the wife of the deceased and 2nd petitioner is the daughter. Case of the petitioners in brief is that on 02.05.2022 at about 19.15 hours, while the deceased was walking through the side of Palakkad – Pattambi road and when he reached at the place Ongallur, a bus bearing registration No.KL-52/Q-5631 driven by the 1st respondent in a rash and negligent manner hit the deceased thereby he was sustained severe injuries and further succumbed to the injuries on 10.05.2022 while undergoing treatment. Hence the petition for a total compensation of Rs.15,00,000/- by the dependents/legal heirs of deceased.

3. The 1st respondent driver of the bus bearing registration No.KL-52/Q-5631 filed written statement denying the petition averments. According to this respondent, there was no negligence on the part of the 1st respondent as alleged in the petition. In fact, negligence of the deceased alone was the reason for the accident. The deceased was a mentally ill person. At the time of accident, this respondent was having valid driving licence to drive the

offending vehicle and the vehicle was validly insured with the 3rd respondent. Even if the Tribunal finds that the petitioners are entitled to get any compensation it has to be paid by the 3rd respondent. The age, occupation and income of the deceased have to be proved by the petitioners. The amount claimed in the petition is highly excessive and exaggerated. Therefore, the petition has to be disposed accordingly.

4. The 2nd respondent, RC owner of the bus bearing registration No.KL-52/Q-5631 remained exparte.

5. The 3rd respondent filed written statement denying the petition averments. At the same time this respondent admits that at the material time of accident the bus bearing registration No.KL-52/Q-5631 was validly insured with this respondent. According to this respondent, there was no negligence on the part of the 1st respondent as alleged in the petition. In fact negligence of the deceased alone was the reason for the accident. The petitioners have to prove that they are the legal heirs of the deceased. The age, occupation and income of the deceased have to be proved by the petitioners. The amount claimed in the petition is highly excessive and exaggerated. Therefore, the petition has to be disposed accordingly.

6. To prove the case of the petitioners Exts.A1 to A12 were marked. No oral or documentary evidence has been adduced on the side of the respondents.

7. Heard both sides.

8. Now the issues that arise for consideration in this petition are:

1. Whether the 1st respondent was driving the vehicle bearing registration No.KL-52/Q-5631 in a negligent manner thereby caused the accident?
2. Whether Muhammed, died due to the injuries sustained in the accident and if so, whether the petitioners are entitled to get compensation as claimed?
3. If so, what is the quantum to be awarded?
4. Reliefs and costs?

9. Issue No.1:- It is the case of petitioners that on 02.05.2022 at about 19.15 hours, while the deceased was walking through the side of Palakkad – Pattambi road and when he reached at the place Ongallur, a bus bearing registration No.KL-52/Q-5631 driven by the 1st respondent in a rash and negligent manner hit the deceased thereby he was sustained severe injuries and further succumbed to the injuries on 10.05.2022 while undergoing treatment. To

prove the negligence of the 1st respondent copy of FIR with FIS was marked as Ext.A1, copy of Scene mahazar was marked as Ext.A2 and copy of charge sheet was marked as Ext.A3.

Ext.A4 is the postmortem certificate, Ext.A5 is the relationship certificate, Ext.A6 is the copy of Aadhar card of the deceased, Ext.A7 is the copy of Aadhar card of the 1st petitioner, Ext.A8 is the copy of Aadhar card of the 2nd petitioner, Ext.A9 is the copy of bank passbook of 1st petitioner, Ext.A10 is the copy of bank passbook of 2nd petitioner, Ext.A11 is the copy of PAN card of 1st petitioner and Ext.A12 is the copy of PAN card of 2nd petitioner.

10. A perusal of Ext.A3 shows that the then Sub Inspector of Police, Pattambi police station, conducted the investigation of the case, completed the investigation and submitted the final report with finding that on 02.05.2022 at 19.15 hours, the 1st respondent being the driver of the bus bearing registration No.KL-52/Q-5631 drove the vehicle in a rash and negligent manner through Palakkad - Pattambi public road and when it reached in front of Classic Arts at Ongallur it hit the deceased thereby the deceased was sustained serious injuries and further succumbed to the injuries while undergoing treatment at Government Medical College Hospital, Thrissur. Therefore, I find that the 1st

respondent had committed the offences punishable under Sections 279 and 304(A) of IPC. It is well settled that final report is the sufficient prima facie evidence to prove negligence in a claim for compensation under Section 166 of the Motor Vehicles Act (**New India Assurance Company Limited v. Palani Ammal and others – I.L.R 2011 (3) Kerala 677**). So I find that the petitioners have successfully proved their case that the accident was occurred solely due to the negligent driving of the offending vehicle by the 1st respondent with the aid of Exts.A1 to A3. Issue No.1 is answered accordingly.

11. Issue Nos.2 & 3:- It is the case of the petitioners that as a result of the rash and negligent act of the 1st respondent, the deceased was sustained grievous injuries, immediately taken to Sevana Hospital, Pattambi and from there taken to Government Medical College Hospital, Thrissur, admitted and treated there as an inpatient and further succumbed to the injuries on 10.05.2022 while undergoing treatment. As per Ext.A4 copy of postmortem certificate, the opinion as to cause of death is ‘death was due to multiple injuries sustained’ following the road traffic accident. Therefore, I find that Muhammed died due to the injuries sustained in the accident involved in this case.

12. Ext.A5 is the relationship certificate dated 22.06.2022 issued from Ongallur village office produced and marked by the petitioners. As per this, the 1st petitioner is the wife of the deceased aged 72 years, 2nd petitioner is the daughter aged 39 years. Therefore, I find that the petitioners who are the dependents/legal heirs of the deceased are entitled to get compensation.

13. According to the petitioners at the time of accident and death the deceased was aged 79 years coolie worker and his monthly income was of Rs.15,000/-. Ext.A6 is the copy of Aadhar card of the deceased. As per Ext.A6 year of birth of the deceased is 1943. Therefore, I find that that at the time of accident, the deceased was aged 79 years. To prove the occupation and income of the deceased no evidence has been adduced. Even then considering the age and other attending circumstances of the deceased, I find that notional monthly income of the deceased can be fixed as of Rs.13,500/- for the purpose of determining compensation in this case. The deceased being aged 79 years at the time of accident and death the proper multiplier is 5. In view of the dictum laid by the Hon'ble Apex Court in **National Insurance Company v. Pranay Sethi - 2017(4)KLT 662 (SC)**, the deceased being aged 79 years, no addition of future prospects is to be permitted. The

deduction towards personal and living expenses should be $\frac{1}{3}$ in the light of the decision reported in **Sarla Verma v. Delhi Transport Corporation - 2010(2) KLT 802** and **National Insurance Company v. Pranay Sethi**. So the annual loss to the dependents is assessed as $13500 \times 12 \times 5 \times \frac{2}{3} = 5,40,000/-$. The learned counsel for the 3rd respondent contended that the 2nd petitioner is major and married away and she is not entitled to get consortium. The 1st petitioner being the wife of the deceased, she is entitled to get consortium.

It has held by the Hon'ble Apex Court in **Rajwati @ Rajjo & Others v. United India Insurance Company Ltd. & Others 2023(1) KLJ 12** in paragraph 31 thus:-

“The deceased left behind four dependants, i.e, the present appellants. In view of this, the grant of 40,000/- by the Trimotor cyclenal towards loss of consortium is insufficient in our view, and deserves interference.

Placing reliance on the Satinder Kaur @ Satwinder Kaur (Supra), the grant of ₹ 40,000/- towards loss of consortium is increased to ₹ 44,000/- to each appellant, amounting to a total of ₹ 1,76,000/-. Along with this, ₹ 15,000/- each for the heads of 'funeral expenses' and 'loss of estate' is also increased to ₹ 20,000/- each”

As held by the Hon'ble Apex Court, in **Rojalini Nayak vs. Ajit Sahoo** there should be 10% enhancement in every three years. In view of the above dictum, I find that the 1st petitioner is entitled to get Rs.48,400/- towards loss of consortium. The petitioners are also entitled to get Rs.20,000/- towards loss of estate and Rs.20,000/- towards funeral expenses.

14. It has come on record that the accident occurred on 02.05.2022 *and* Muhammed died on 10.05.2022 while undergoing treatment. *The learned counsel for the petitioners relied upon a reported ruling of the Hon'ble High Court of Kerala in 2024 KHC OnLine 112 Mable v. Lenoy Sebastian. It has held in the said judgment that "by virtue of statutory stipulations contained in provisions of Kerala Torts (Miscellaneous Provisions) Act, 1976, right to sue for said compensation would survive upon legal heirs if injured died at a later point of time and, they can pursue the said claim."* In view of the above decision, *this Tribunal is of the opinion that the petitioners are entitled to get a sum of Rs.25,000/- towards pain and suffering.*

Considering the entire facts and circumstances of the case, I find that the following can be fixed as just and reasonable compensation in this case.

Sl. No.	Head of Claim	Amount claimed in	Amount awarded	Basis-vital details in a nut shell
1	Transport to hospital	10000	6000	Considering the distance between the place of accident, hospitals and home
2	Damages to clothing and articles	5000	1000	Nominal amount
3	Compensation for loss of dependency	500000	540000	13500x12x5x2/3
4	Funeral expenses	50000	20000	2023(1) KLJ 12
5	Loss of estate	500000	20000	2023(1) KLJ 12
6	Compensation for loss of consortium	500000	48400	(48400x1) 2023(1) KLJ 12
7	Compensation for loss of love and affection	500000	0	
8	Pain and suffering	100000	25,000	2024 KHC OnLine 112
	Total	21,65,000	6,60,400	

Issues are answered accordingly.

15. Issue No.4:- The 3rd respondent has admitted the insurance coverage of the vehicle bearing registration No.KL-52/Q-5631. This Tribunal found that the accident occurred due to the negligence on the side of the 1st respondent. Therefore, this Tribunal finds that the 3rd respondent is liable to indemnify the other respondents. The issue is answered accordingly.

In the result, the application is allowed in part and an award is passed for Rs.6,60,400/- (Rupees six lakh sixty thousand and four hundred only) with interest @ 8% per annum from the date of filing of the application on 08.11.2022 till

realisation with proportionate cost.

The 3rd respondent is directed to furnish cheques for Rs.14,368/- being court fee and Rs.15,000/- being Legal Benefit Fund payable by the petitioners in the name of the Motor Accidents Claims Tribunal Ottapalam.

70% of the award amount shall be paid to the 1st petitioner and 30% to the 2nd petitioner.

(1) R3/insurer shall deposit the balance Award amount within one month to the credit of the Bank Account of Motor Accidents Claims Tribunal, Ottapalam shown below, directly by National Electronic Fund Transfer (NEFT) / Real Time Gross Settlement (RTGS) or any other electronic mode.

(2) R3/insurer shall instruct their bank to ensure deposit of the Award amount by way of Direct Bank Transfer to the account of the Motor Accidents Claims Tribunal, Ottapalam shown above containing following informations in the prescribed format (which is already circulated) by way of compliance of the Award.

1	OP(MV) Number	
2	On the file of (Motor Accidents Claims Tribunal Name)	
3	Date of Award	
4	Compensation Amount	
5	Income Tax Deduction at Source, if any, in accordance with law.	
6	Bank Transaction Reference No./Unique Transaction Reference (UTR) No.	

(3) On such deposit being made R3/insurer shall submit a letter to this Tribunal enclosing a copy of said bank advice in the prescribed format (which is already circulated) as per which deposit was made to the bank account of this Tribunal.

(4) R3/insurer shall also send a copy of payment advice to the Motor Accidents Claims Tribunal, concerned and serve a copy of the same on the claimants or their counsels.

(5) 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 accounts of petitioners shown below directly by way of NEFT/ RTGS or any other electronic mode.

Name of petitioner		Name of Bank	Name of Branch	Account Number	IFSC Code
P1	AMINA KT	State Bank of India	Ongallur	30078742927	SBIN0006458
P2	SEENATH	Federal Bank	Pattambi	14120100061506	FDRL0001412

(8)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 petitioners.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 17th day of May, 2025.

Motor Accidents Claims Tribunal

APPENDIX

Petitioner's Witness Examined : Nil

Petitioner's Exhibits Marked :

A1	:	03/05/2022	:	Copy of FIR & FIS
A2	:	04/05/2022	:	Copy of Scene Mahazar
A3	:	29/06/2022	:	Copy of Charge Sheet
A4	:	11/05/2022	:	Post Mortem Certificate
A5	:	22/06/2022	:	Relationship Certificate
A6	:	Nil	:	Aadhar card of the deceased

A7	:	Nil	:	Aadhar card of the 1 st Petitioner
A8	:	Nil	:	Aadhar card of the 2 nd Petitioner
A9	:	04/07/2019	:	Bank passbook copy of 1 st petitioner
A10	:	28/07/2008	:	Bank passbook copy of 2 nd petitioner
A11	:	Nil	:	Pancard of 1 st Petitioner
A12	:	Nil	:	Pancard of 2 nd Petitioner

Respondent's Witness examined : Nil

Respondent's Exhibits Marked : Nil

Motor Accidents Claims Tribunal

MEMO OF COST

Petitioner's Cost : Allowed. Cost list filed

Sl No	Particular	Amount
1	Court fee	5.00
3	Writing fee	200.00
4	Advocate Fee	35420.00
5	Stamp on Petition	7.00
6	Process fee	105.00
	Total	35737.00

Respondents Cost : Not Allowed.

Motor Accidents Claims Tribunal

Note :- "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."

Typed by : Aswathy P
Compared by : Deepa K S

Fair/Copy of Award
in OP (MV) No.674/2022
Dated 17/05/2025
(1+3)