

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM

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

Wednesday 31st day of January 2024

(11th day of Magha, 1945 S.E.)

ORIGINAL PETITION (MV) No. 675/2022

Petitioners

- 1) Girija K, 49 years, mother of deceased, W/o Late Krishnankutty, Kunnakalthodi, Pulachithra, Vaniyamkulam, Ottapalam, Palakkad, Kerala 679 522.
- 2) Kiran K, 27 years, Brother of the deceased, S/o Late Krishnankutty, Kunnakalthodi Pulachithra, Vaniyamkulam, Ottapalam, Palakkad, Kerala – 679 522.
- 3) Shijith K, 23 years, Brother of the deceased, S/o Late Krishnankutty, Kunnakalthodi Pulachithra, Vaniyamkulam, Ottapalam, Palakkad, Kerala – 679 522.

By advocate : Adv. K. Sujith Kumar

Versus

Respondents

- 1) Jayaprakash T, aged 50 years, S/o Achuthan Nair K, Thekkattuthodi house, Kannambara, Irunilamkode Post, Mullurkara Village, Thrissur – 680 583
(Driver of KL 48-B-0077 Bus)
- 2) Thomas George, Aged about 50 years, S/o George Palikkal house, YMCA Colony, Shoranur P.O., Ottapalam, Palakkad, Kerala 679 121
- 3) The Oriental Insurance Company Limited 9/82 (12), KVM Plaza, Main Road, Ottapalam P.O., Palakkad, Kerala – 679 101.
(Insurer of KL 48-B-0077 Ashok leyland Bus),
(Policy No. 442090/31/2023/1791 Valid up to 20/06/2023)

R1, R2 : Adv. K.P. Kunhimohammed

R3 : Adv. N.K. Jayadevan

This petition having been finally heard on 23/01/2024 and the Tribunal on 31/01/2024 passed the following.

AWARD

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

2. Case of the petitioners in brief is that on 28.06.2022 at about 12.05 hours, while the deceased was riding his motor cycle bearing registration No.KL-51/K-5399 through Shornur – Pattambi public road and when it reached at the place Ongallur Pokkupadi Medu, a bus bearing registration No.KL-48/B-0077 driven by R1 in a very rash and negligent manner hit on the motor cycle ridden by the deceased thereby he was sustained serious injuries and further succumbed to the injuries. Hence the petition for compensation for a total compensation of Rs. 30,00,000/- by the dependents/legal heirs of deceased Kishore.

3. The 1st respondent, driver of the offending vehicle and 2nd respondent, registered owner same vehicle filed joint written statement denying the petition averments. According to these respondents, there was no negligence on the part of the 1st respondent. In fact negligence of the deceased in riding the motor cycle alone was the reason for the accident. The 1st respondent was having valid and

effective badge and driving licence to drive the offending vehicle and the offending vehicle was validly insured with 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. Even if any amount is found liable to be paid to the petitioners it has to be paid by the 3rd respondent. Therefore, the petition has to be disposed accordingly.

4. The 3rd respondent filed written statement denying the petition averments. At the same time this respondent admits that the vehicle bearing registration No.KL-48/B-0077 was validly insured with this respondent at the material time of accident. According to this respondent there was no negligence on the part of the 1st respondent as alleged in the petition. On the other hand negligence of the deceased alone is the reason for the accident. The 2nd respondent is to be directed to produce the driving licence of the 1st respondent and permit of the vehicle. 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.

5. To prove the case of the petitioners Exts.A1 to A9 were marked. To prove the case of respondents Exts.B1 to B7 were marked.

6. Heard both sides.

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

1. Whether the 1st respondent was driving the vehicle bearing registration No.KL-48/B-0077 in a negligent manner thereby caused the accident?
2. Whether Kishore, s/o. late Krishnankutty 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?

8. Issue No.1:- It is the case of petitioners that on 28.06.2022 at about 12.05 hours, while the deceased was riding his motor cycle bearing registration No.KL-51/K-5399 through Shornur – Pattambi public road and when it reached at the place Ongallur Pokkupadi Medu, a bus bearing registration No.KL-48/B-0077 driven by R1 in a very rash and negligent manner hit on the motor cycle ridden by the deceased thereby he was sustained serious injuries and further succumbed to the injuries. According to the respondents there was no negligence on the part of the 1st respondent as alleged in the petition. On the other hand negligence of the deceased alone is the reason for the accident. Though so many contentions are raised in the written statement of the respondents, no evidence has been adduced to prove this. On the other hand 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, copy of final report

was marked as Ext.A3, copies of AMVI reports were marked as Exts.A5 and A6. Ext.A4 is the copy of postmortem certificate, Ext.A7 is the relationship certificate, Ext.A8 is the copy of driving licence of the deceased and Ext.A9 is the copy of identity card. Ext.B1 is the copy of driving licence of the 1st respondent, Ext.B2 is the copy of RC of the offending vehicle bearing registration No.KL-48/B-77, Ext.B3 is the copy of policy, Ext.B4 is the copy of fitness certificate, Ext.B5 is the copy of permit, Ext.B6 is the copy of tax licence and Ext.B7 is the copy of pollution under control certificate. 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 28.06.2022 at 12.05 noon, the 1st respondent being the driver of the bus bearing registration No.KL-48/B-0077 drove the vehicle in a rash and negligent manner through Shornur – Pattambi public road and when it reached at the place Ongallur Pokkupadi Medu, it hit on the motor cycle bearing registration No.KL-51/K-5399 ridden by the deceased thereby he was sustained grievous injuries and further succumbed to the injuries. Hence 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, A5 and A6. Issue No.1 is answered accordingly.

9. 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, Kishore was sustained grievous injuries, immediately taken to Sevana Hospital, Pattambi, but succumbed to the injuries on the same day. Ext.A4 is the copy of postmortem certificate. As per this, the above said Kishore died due to traumatic brain injury due to the road traffic accident. Therefore, I find that Kishore died due to the injuries sustained in the accident involved in this case.

10. As per Ext.A7 relationship certificate issued from Vaniyamkulam I village office, 1st petitioner is the mother of the deceased aged 48 years, 2nd and 3rd petitioners are the brothers aged 27 and 23 years. Therefore, I find that the petitioners who are the dependents/legal heirs of the deceased are entitled to get compensation.

11. According to the petitioners at the time of accident and death the deceased was aged 25 years, sales executive and his monthly income was of Rs. 15,000/-. As per Ext.A8 copy of driving licence of the deceased his date of birth is 27.10.1996. Therefore, at the time of accident and death the deceased was aged 25

years. To prove the occupation and income of the deceased no evidence has been adduced. Even then considering the age of the deceased at the time of accident and death and other attending circumstances, I find that notional monthly income of the deceased can be calculated as of Rs. 13,500/- for the purpose of determining compensation in this case. The deceased being aged 25 years at the time of accident and death the proper multiplier is 18. 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 25 years, 40% of the monthly income is to be added for future prospects, by adding so the monthly income comes to Rs. 18,900/-. It has come on record that at the time of death the deceased was a bachelor. Therefore, deduction towards personal and living expenses should be 1/2 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 $18900 \times 12 \times 18 \times 1/2 = 20,41,200/-$.

12. In **Magma General Insurance Company Limited vs. Nanu Ram and Others 2018(18) SCC 130** the Hon'ble Apex Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium as well as filial consortium and also held that loss of love and affection is comprehended in loss of consortium. The 2nd and 3rd petitioners are major brothers

of the deceased and they have their own income. Therefore, in the light of the above dictum, I find that the 1st petitioner only depending on deceased and 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 Tribunal towards loss of consortium is insufficient in our view, and deserves interference.

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

In view of the above dictum, I find that the 1st petitioner is entitled to get Rs. 44,000/- towards loss of consortium, Rs. 20,000/- towards loss of estate and Rs. 20,000/- towards funeral expenses.

13. The learned counsel for the 3rd respondent contended that interest cannot be allowed to future prospects. That is a contention sustainable in law, in view of

the decision of the Hon'ble Apex Court as **R.D.Hattangadi v. Pest Control (India) Private Limited (AIR 1995 SC 755)**.

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	5000	2000	The deceased was taken to hospital and back to home
2	Damages to clothing and articles	1000	1000	Nominal amount
3	Compensation for loss of dependency	2500000	2041200	18900x12x18x1/2
4	Funeral expenses	50000	20000	2023(1) KLJ 12
5	Loss of estate	100000	20000	2023(1) KLJ 12
6	Compensation for pain and suffering	100000	0	
7	Compensation for loss of consortium	100000	44,000	(44000x1) 2023(1) KLJ 12
8	Compensation for loss of love and affection	400000	0	
	Total	3256000	21,28,200	
	Limited to	30,00,000		

Issues are answered accordingly.

14. Issue No.4:- The 3rd respondent has admitted insurance coverage of the vehicle bearing registration No.KL-48/B-0077. This Tribunal found that the accident occurred due to the negligence on the side of the 1st respondent. Therefore, the 3rd respondent is liable to indemnify the other respondents.

In the result, the application is allowed in part and an award is passed for Rs. 21,28,200/- (Rupees twenty one lakh twenty eight thousand and two hundred only) with interest @ 8% per annum from the date of filing of the petition ie. from 08.11.2022 till realisation with proportionate cost except for future prospects as the same relates to an income to be given in the future, in view of the ruling of the Apex Court in **R.D.Hattangadi v. Pest Control (India) Private Limited (AIR 1995 SC 755)**.

The 3rd respondent is directed to furnish cheque for Rs. 29,368/- being court fee and Rs. 30,000/- being Legal Benefit Fund payable by the petitioners in the name of Motor Accidents Claims Tribunal, Ottapalam.

Out of the award amount 60% shall be paid to the 1st petitioner and 20% each to the 2nd and 3rd petitioners.

The 3rd respondent is directed to deposit share amounts of the petitioners ordered to be paid directly to their bank by way of electronic transfer and they are entitled to draw the amount as and when required.

The 3rd respondent shall comply with the above directions within one month from the date on which the petitioners furnish the details of their bank accounts such as account number and IFSC code. It is clarified that the petitioners shall not be entitled for interest from this date till the date of furnishing bank account details.

The 3rd respondent shall file a statement regarding the compliance of the order, before this Tribunal along with a copy of transaction record certified by the bank concerned.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 31st day of January 2024.

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APPENDIX

Petitioner's Witness Examined : Nil

Petitioner's Exhibits Marked :

A1	:	28/06/2022	:	Copy of FIR and FIS
A2	:	29/06/2022	:	Copy of Scene Mahazar
A3	:	29/07/2022	:	Copy of Charge Sheet
A4	:	29/06/2022	:	Copy of Postmortem Certificate
A5	:	--	:	Copy of AMVI Report
A6	:	--	:	Copy of AMVI Report
A7	:	03/10/2022	:	Relationship Certificate
A8	:	--	:	Driving Licence of deceased
A9	:	--	:	Copy of Identity Card

Respondent's Witness examined : Nil

Respondent's Exhibits Marked :

B1 : Driving Licence of R1
 B2 : Copy of Registration Certificate
 B3 : Copy of Policy
 B4 : Copy of Fitness Certificate

B5 : Copy of Permit

B6 : Tax Licence (copy)

B7 : Copy of Pollution Certificate

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MEMO OF COST

Petitioner's Cost : Allowed. Cost list filed

Sl No	Particular	Amount
1	Court fee	20654.00
2	Stamp on vakkalath	5.00
3	Writing fee	200.00
4	Advocate Fee	108810.00
5	Process fee	102.00
6	Stamp on document	10.00
	Total	1,29,781.00

Respondents Cost : Not Allowed.

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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 : Smeril

Compared by :

Fair/Copy of Award
in OP (MV) No.675/2022
Dated 31/01/2024

(1+3)