

IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOTTAYAM

Present:- Smt.V.G.Sreedevi., Motor Accidents Claims Tribunal

Wednesday 7th October, 2020

15th Aswina 1942

OP(MV) Nos1095/2016,1096/2016,2014/2016 and 2015/2016

OP(MV.No.1095/2016

PETITIONER:- Varghese, aged 68 years, Vellappally House,
Vijayapuram Village, Vadavathoor Kara.

By Adv. Sri. Vivek Soman.K

RESPONDENTS:

1. Nijumon.K.J, Kunnappally House, Manganam.P.O., Managanam, Kottayam-686018
2. The New India Assurance Co.Ltd, Kottayam-686002, represented by its Divisional Manager.
3. T.D.Prabhan, Thazhathel House, Adichira.P.O., Kottayam-686630

Addl.R4. Eldho Tom Chacko, S/o Chacko, Kayalathu House,
Njarackal Bhagom, Vadavathoor Kara, Vijayapuram Village,
Kottayam.

Addl.4th respondent impleaded as per order in IA.6602/2018 dated 09.10.2019.

R1 and Addl. R4 By Adv.Sri.Alby Abraham

R2 by Adv.Sri.V.A.Abraham

R3 By Adv.Sri. Jacob D Nellickappally

OP(MV).No.1096/2016

PETITIONERS:-

1. Varghese, aged 66 years, Vellappally House, Vijayapuram Village, Vadavathoor Kara.

2. Lijiya Varghese, aged 38 years, Wo Aji.M.Korah, Mulanjiyil House, Kollad.P.O., Kottayam.
3. Kochumol Varghese aged 37 years, W/o Binoy Kuriakose, Pallikkunel House, Manarcad Village Vadavathoor kara.

By Adv. Sri. Vivek Soman.K

RESPONDENTS:

1. Nijumon.K.J, Kunnappally House, Manganam.P.O., Managanam, Kottayam-686018
2. The New India Assurance Co.Ltd, Kottayam-686002, represented by its Divisional Manager.
3. T.D.Prabhan, Thazhathel House, Adichira.P.O., Kottayam – 686630

Addl.R4. Eldho Tom Chacko, S/o Chacko, Kayalathu House, Njarackal Bhagom, Vadavathoor Kara, Vijayapuram Village, Kottayam.

Addl.4th respondent impleaded as per order in IA.6603/2018 dated 09.10.2019.

R1 and Addl. R4 By Adv.Sri.Alby Abraham

R2 by Adv.Sri.V.A.Abraham

R3 By Adv.Sri. Jacob D Nellickappally

OP(MV).No.2014/2016

PETITIONER:- Susy Kora, aged 68 years, Mulanjiyil House, Kollad.P.O., Panachikad Village, Kottayam.

By Adv. Sri. Vivek Soman.K

RESPONDENTS:

1. Nijumon.K.J, Kunnappally House, Manganam.P.O., Managanam, Kottayam-686018
2. T.D.Prabhan, Thazhathel House, Adichira.P.O., **(Deleted)** Kottayam - 686630

3. The Divisional Manager, The New India Assurance Co.Ltd,
Kottayam- 686002

Addl.R4 Eldho Tom Chacko, S/o Chacko, Kayalathu House,
Njarackal Bhagom, Vadavathoor Kara, Vijayapuram Village,
Kottayam-686010.

Addl.4th respondent impleaded as per order in IA.1581/2019 dated
09.10.2019.

R1 and Addl. R4 By Adv.Sri.Alby Abraham

R3 by Adv.Sri.V.A.Abraham

OP(MV).No.2015/2016

PETITIONER:- Jincy Sara Jacob (Minor), D/o Jacob Thomas, Kocheril,
Puthenchantha.P.O., Vakathanam, Changanacherry,
Kottayam. Represented by her next friend Jacob Thomas,
S/o Thomas, Kocheril, Puthenchantha.P.O., Vakathanam,
Changanacherry, Kottayam.

By Adv. Sri. Vivek Soman.K

RESPONDENTS:

1. Nijumon.K.J, Kunnappally House, Manganam.P.O.,
Managanam, Kottayam- 686018
2. T.D.Prabhan, Thazhathel House, Adichira.P.O., **(Deleted)**
Kottayam - 686630
3. The Divisional Manager, The New India Assurance
Co.Ltd, Kottayam- 686002

Addl.R4. Eldho Tom Chacko, S/o Chacko, Kayalathu House,
Njarackal Bhagom, Vadavathoor Kara, Vijayapuram Village,
Kottayam.

Addl.4th respondent impleaded as per order in IA.1582/2019 dated
09.10.2019.

R1 and Addl. R4 By Adv.Sri.Alby Abraham

R3 by Adv.Sri.V.A.Abraham

These Petitions having been finally heard on 30.09.2020 and the Tribunal on **07.10.2020** delivered the following:

COMMON AWARD

These are the petitions filed under Section 166 of the Motor Vehicles Act, 1988.

2. The case of the petitioners in brief is as follows :- Petitioner in OP (MV) 1095/2016 and the deceased Mariyamma Varghese, his wife and the petitioners in other two OPs, while travelling in a car bearing registration No KL-5-AJ-399, through the Muvattupuzha – Angamali road on 23.04.2016, at Velloorkunnam Signal junction, the vehicle hit on an electric post due to the negligence of the driver at 03.00 a.m, thereby all the passengers suffered injuries and Smt. Mariyamma Varghese succumbed to the injuries within few hours. Petitioners in OP(MV) 1096/2016 are the husband and children of Smt. Mariyamma and all other petitions filed by the injured.

3. First respondent is the owner, second respondent is the insurer, third respondent is the driver and additional 4th respondent is the driver.

4. The third respondent was deleted and thereby additional 4th respondent was impleaded.

5. First and additional fourth respondents together filed written statement in all the petitions with similar set of contentions. The contentions

are as follows:- The age, occupation and income shown are not correct. The amount claimed is highly excessive. There was no negligence on the part of the additional fourth respondent. The vehicle had fitness, permit and policy coverage and additional fourth respondent had valid driving license at the time of accident.

6. Second respondent filed written statement in all the petitions with similar set of contentions. The contentions are as follows:- Third respondent is an unnecessary party as he was not the driver of the vehicle. There was a valid policy coverage for the offending vehicle during the time of accident. The amount claimed is highly excessive.

7. Third respondent filed written statement in all the petitions with similar set of contentions. The contentions are as follows:- The accident was not due to the negligence of this respondent who has no connection with this case and on enquiry, this respondent came to know that the vehicle was driven by one Mr. Eldo Tom Chacko. Hence, he sought for dismissal of the petition with his costs.

8. As per the order in I.A. No 2/2020 in OP 1095/2016, joint trial was allowed, thereby O.P (MV) 1095/2016 is taken as the leading case.

9. Evidence in these cases consists of documentary evidence alone which are Exts. A1 to A18 and B1 to B4.

10. Heard both sides.

11. The issues that arise for consideration are :-

1. Was the accident took place due to the negligence on the part of the additional fourth respondent, as alleged ?
2. What is the quantum of compensation entitled by the petitioner in OP (MV) 1095/2016 ?
3. What is the quantum of compensation entitled by the petitioner in OP(MV) 1096/2016 ?
4. What is the quantum of compensation entitled by the petitioner in OP(MV) 2014/2016 ?
5. What is the quantum of compensation entitled by the petitioner in OP(MV) 2015/2016 ?
6. Reliefs and costs ?

12. **Issue No. 1 in all the cases:-** Petitioner in OP(MV) 1095/2016, his wife Smt. Mariyamma Varghese and petitioners in OP(MV) 2014/2016 and 2015/2016, while travelling in a car were injured when the car hit on an electric post negligently driven by the additional 4th respondent. To prove the case, Ext A1 FIR and Ext A4 charge sheet produced. These documents would show that the accident was due to the negligence on the part of additional fourth respondent. No counter evidence adduced. Therefore, charge sheet being the prima facie proof of negligence, I find that the accident was due to the negligence on the part of additional fourth respondent respondent. Therefore, I find this issue in favour of all the petitioners.

13. **Issue No 2 (O.P. (MV) No 1095/2016):-** Ext A6 is the wound certificate from Malankara Orthodox Syrian Church Medical College Hospital, Kolencherry and Ext A7 is the discharge summary from the said hospital. He was admitted there on 23.04.2016 and discharged on 26.04.2016. He had multiple rib fractures 1 to 7 on left side with moderate hemothorax on left, fracture dislocation on right hip posterior. He had hyper tension, coronary artery disease and diabetes mellitus. His CT reveals mild left sided pleural effusion, displaced fracture of manubrium sterni, fracture of floor and medial boarder of right acetabulum and posterior dislocation of right femoral head.

14. After that, he was admitted in Caritas hospital, Thellakom on 26.04.2016 itself and discharged on 17.05.2016. He had sciatic nerve injury right as per Ext.A8.

15. He was aged 68 years as per the petition. There is no document to show his actual income and he is claimed to have dairy farming and agriculture with a monthly income of ₹15,000/-. The accident was of the year 2016. Hence, in view of the decisions in Ramachandrappa v. Manager, Royal Sundaram & Alliance Insurance Co. Ltd., AIR 2011 SC 2951 and Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd., AIR 2014 SC 1052, a notional income of ₹10,000/- is taken. Considering the nature of injuries he suffered, eight months rest is considered for convalescence. Thus

the loss of earning during the period of treatment is calculated at ₹80,000/- (10000x8).

16. He has produced medical bills as Ext A9 series for ₹242324.27, hence that is granted towards the medical expenses.

17. He was an inpatient for total 25 days. Therefore, towards bystander's expenses ₹6250/- is granted, taking ₹250/- as the expense of a bystander per day.

18. Towards extra nourishment, a sum of ₹5,000/- is granted in view of the extra diet he required. Towards damage to clothing etc., ₹1,000/- is granted.

19. The place of accident is at Velloorkunnam Signal junction on the Muvattupuzha – Angamali road. He was taken to Malankara Orthodox Syrian Church Medical College Hospital, Kolencherry and thereafter he was treated at Caritas Hospital, Thellakom. He is residing at Vadavathur, Kottayam, hence towards the transportation expenses ₹8,000/- is granted.

20. Considering the nature of injuries he suffered, towards pain and suffering ₹1,50,000/- is granted.

21. In view of the difficulties and inconveniences he suffered, ₹25,000/- is granted towards loss of amenities and conveniences.

22. Thus a total sum of ₹5,17,570/- is granted towards compensation which is summarised as follows:-

TABULAR STATEMENT

Sl. No	Head of claim	Amount claimed (in Rupees)	Amount awarded (in Rupees)	Basis -vital details in a nut shell
1	Loss of earning (Partial)	2,00,000 20,000	80,000	₹10,000 X 8 months
2	Medical and miscellaneous expenses	400,000	2,42,324.27	(acceptable bills for ₹242,324.27 as per Ext A9 series)
3	Bystander expense	50,000	6,250	250x25
4	Future treatment	200,000	Nil	
5	Transportation expenses	5,000	8,000	
6	Extra nourishment	10,000	5,000	
7	Damage to clothing etc	2,000	1,000	
8	Pain and suffering	200,000	1,50,000	
9	For permanent disability	10,00,000	Nil	
10	Loss of amenities and conveniences	100,000	25,000	
	Total Limited to	₹19,87,000/- ₹19,50,000/-	₹5,17,574.27 Rounded to ₹5,17,570/-	₹5,17,570/- along with interest at the rate of 8% p.a from 12.08.2016.

23. Issue No. 3(O.P. (MV) No 1096/2016):- Ext A11 is the wound certificate of Smt. Mariyamma Varghese. Ext A12 is the treatment summary. She expired at the 7.55 am on the same day. Exts. A13 is the copy of inquest report and A14 is the copy of postmortem certificate of the deceased Smt. Mariyamma Varghese.

24. There is no document to show her actual income as she is a house wife. Ext A18 is the copy of her passport and her date of birth is 10.04.1952. So, she was 64 years at the time of accident. As she is a house wife, a notional income of ₹7500/- is taken for calculating the compensation in view of the decisions in Ramachandrappa v. Manager, Royal Sundaram & Alliance Insurance Co. Ltd., AIR 2011 **Supreme Court** 2951 and Sayed Sydiq v. Divisional Manager United India Insurance Co. Ltd., AIR 2014 **Supreme Court** 1052.

25. Petition is filed by her husband and daughters and children are aged 37 and 38 years and both are married. Therefore, the husband alone can be treated as the dependant of the wife.

26. The learned counsel for the third respondent has relied upon 2017(4) KLT899, Sujatha v. Oriental Insurance Co. Ltd. It is also a case of similar facts and the Court found that, as the children are aged 34 and 32 years in the said case, were not be treated as dependant of their father, who died in the said case. So, 50% deduction was ordered to be calculated taking the spouse alone as the dependant. So, in the like manner, in this case also, as she was 64 years, there is no addition and the husband alone being the dependant, half is to be deducted towards personal expenses. Half of ₹7500 is ₹3750/-. The multiplier is 7 as per Sarla Verma's case, so the dependency compensation is calculated at ₹3,15,000/- (7500-50%)x12x7).

27. The learned counsel for petitioner also relied upon 2020(3) KHC 666 Gopinathan.A & others V. Afzal Basha & another, 2020(4) KHC 37, Glanies & Others V. Lazar Manjita & others.

28. As per (2017(5) KHC 350 (SC)) National Insurance Company Ltd v. Pranay Sethi and Others, towards loss of estate and funeral expenses, ₹15,000/- each is granted.

29. The place of accident is at Velloorkunnam Signal junction on the Muvattupuzha – Angamali road and the deceased was immediately taken to MOSC Medical College Hospital, Kolenchery and expired on the same day. The deceased was residing at Vadavathur. Ext A15 is the receipt of ambulance service for ₹6250/-, hence towards the transportation expenses ₹6250/- is granted.

30. As per the decision of the Hon'ble Supreme Court in (2018 ACJ 2782) Magma General Insurance Company Limited v. Nanu Ram @ Chuhru, towards the spousal consortium ₹40,000/- is granted to the 1st petitioner for the loss of company, society, co-operation, affection and aid of the other in conjugal relation and towards the parental consortium, ₹40,000/- each is granted to the second and third petitioners, due the loss of parental aid, protection, affection, society, discipline, guidance and training.

31. Thus a total sum of ₹4,77,250/- is granted towards compensation which is summarised as follows:-

Sl. No	Head of claim	Amount claimed (in Rupees)	Amount awarded (in Rupees)	Basis -vital details in a nut shell
1	Medical and miscellaneous expenses	80000	Nil	
2	Transportation expenses	5000	6,250	As per Ext A15 taxi service receipt.
3	Damage to clothing etc	2000	1,000	
4	For funeral expenses	35000	15,000	
5	For loss of estate	200000	15,000	
6	Pain and suffering	200000	5,000	
7	For loss of consortium	150000	1,20,000	40000 X 3
8	For loss of love and affection	200000	Nil	
9	For loss of dependency	1000000	3,15,000	3750 x 12 x 7
	Total Limited to	₹17,92,000/- ₹17,50,000/-	₹4,77,250/-	₹4,77,250/- along with interest at the rate of 8% p.a from 12.08.2016.

32. Issue No 4 in OP(MV) 2014/2016:- Petitioner is a 68 year old house wife and Ext A16 is the wound certificate from Malankara Orthodox Syrian Church Medical College Hospital, Kolencherry. She had contusion and abrasion right cheek, abrasion right lower chest and abrasion left knee. This is the only document produced in the said case. Hence, a consolidated sum of ₹15000/- is granted towards the compensation.

33. **Issue No 5 in OP(MV) 2015/2016:-** Petitioner is a 12 year old girl and Ext A17 is the wound certificate from Malankara Orthodox Syrian Church Medical College Hospital, Kolencherry. She had lacerated wound about 3 cm inside left cheek and this is the only document produced to show her injury. Hence, a consolidated sum of ₹15,000/- is granted towards the compensation.

34. **Issue No.6:** In the result, these petitions are allowed and the following award is passed:-

1. In **OP(MV) No 1095/2016:-** A total amount of ₹5,17,570/- (Rupees Five Lakhs Seventeen Thousand Five Hundred and Seventy only) with interest at the rate of 8% per annum from the date of petition (12.08.2016) till the date of realisation with proportionate costs is awarded towards compensation to the petitioner.
2. The second respondent shall deposit ₹18,873/- (Rupees Eighteen Thousand Eight Hundred and Seventy-three only) towards court fee payable in favour of MACT, Kottayam.
3. The second respondent shall produce a cheque for ₹1,00,000/- (Rupees One Lakh only) drawn in the name of the petitioner and produce the cheque before the nationalized bank, along with a copy of award and create a Fixed Deposit for three years.
4. The second respondent shall deposit balance awarded amount directly to the bank account of the petitioner by way of electronic fund transfer to be withdrawn by the petitioner.
5. A lien shall be marked on the face of the receipts stating that the amount shall be repaid only on maturity and by

crediting to the petitioner's account or else only on the Orders of the Tribunal/ High Court.

6. After certifying the statement by the bank concerned, it shall hand over the Fixed Deposit receipt to the petitioner.
7. **In OP(MV) No.1096/2016:-** A total amount of ₹4,77,250/- (Rupees Four Lakhs Seventy-seven Thousand Two Hundred and Fifty only) with interest at the rate of 8% per annum from the date of petition (12.08.2016) till the date of realisation with proportionate costs is awarded towards compensation to the petitioners.
8. The second respondent shall deposit ₹16,873/- (Rupees Eighteen Thousand Eight Hundred and Seventy-three only) towards court fee payable in favour of MACT, Kottayam.
9. The second respondent shall deposit ₹40,000/- each directly to the bank account of the second and third petitioners by way of electronic fund transfer to be withdrawn by them.
10. Out of the remaining awarded amount, the second respondent shall produce a cheque for ₹100,000/- (Rupees One Lakh only) drawn in the name of the first petitioner and produce the cheque before the nationalized bank, along with a copy of award and create a Fixed Deposit for three years and deposit balance awarded amount directly to the bank account of the first petitioner by way of electronic fund transfer to be withdrawn by the first petitioner.
11. A lien shall be marked on the face of the receipt stating that the amount shall be repaid only on maturity and by crediting to the petitioners' account or else only on the Orders of the Tribunal/ High Court.

12. After certifying the statement by the bank concerned, it shall hand over the Fixed Deposit receipts to the first petitioner.
13. **In OP(MV) No.2014/2016**:-A total amount of ₹15,000/- (Rupees Fifteen Thousand only) with interest at the rate of 8% per annum from the date of petition (31.12.2016) till the date of realisation with proportionate costs is awarded towards compensation to the petitioner.
14. The second respondent shall deposit ₹60/- (Rupees Sixty only) towards court fee payable in favour of MACT, Kottayam.
15. The second respondent shall deposit balance awarded amount directly to the bank account of the petitioner by way of electronic fund transfer to be withdrawn by the petitioner.
16. **In OP(MV) No.2015/2016**:-A total amount of ₹15,000/- (Rupees Fifteen Thousand only) with interest at the rate of 8% per annum from the date of petition (31.12.2016) till the date of realisation with proportionate costs is awarded towards compensation to the petitioner.
17. The second respondent shall deposit ₹48/- (Rupees Forty-eight only) towards court fee payable in favour of MACT, Kottayam.
18. The second respondent shall produce a cheque for the balance awarded amount in the name of the minor petitioner and it shall be deposited in a nationalized bank till the minor attains majority.
19. ***After compliance of the Order, the second respondent shall file a statement regarding compliance of the Order along with copy of the transaction record certified by the bank concerned to this Tribunal.***
20. ***In case the petitioners have not produced the account number before the Tribunal, the interest of the award amount will cease to run from the date of***

award to the date of production of Bank Account number with IFSC code and attested copy of the relevant page of the bank pass book.

21. All the amount shall be paid within one month from the date of this award.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court on this the 7th day of October, 2020.

**V.G. SREEDEVI,
MOTOR ACCIDENTS CLAIMS TRIBUNAL.**

APPENDIX

Exhibits for the Petitioners:-

A1	:	23.04.2016	:	Copy of FIR in Crime No.1211/2016 of Moovattupuzha Police Station
A2	:	23.04.2016	:	Copy of F.I statement
A3	:	23.04.2016	:	Copy of Scene Mahazar
A4	:	23.04.2016	:	Copy of Charge sheet
A5	:	25.04.2016	:	Copy of AMVI Report
A6	:	23.04.2016	:	Copy of Wound Certificate
A7	:	26.04.2016	:	Copy of Discharge Summary
A8	:	17.05.2016	:	Discharge Summary
A9 series	:	various dates	:	Medical Bills
A10	:	26.04.2016	:	Ambulance Receipt
A11	:	23.04.2016	:	Copy of Wound Certificate
A12	:	23.04.2016	:	Copy of Treatment Summary
A13	:	23.04.2016	:	Copy of Inquest Report
A14	:	23.04.2016	:	Copy of Postmortem Certificate
A15	:	13.04.2016	:	Ambulance Receipt
A16	:	23.04.2016	:	Copy of Wound Certificate
A17	:	23.04.2016	:	Copy of Wound Certificate
A18	:	08.10.2009	:	Copy of Passport

Exhibits For the Respondents:

B1 : 27.12.2015 : Copy of Policy
B2 : 27.12.2013 : Copy of Registration Certificate
B3 : 01.02.2014 : Contract carriage Permit
B4 : 04.05.2013 : Copy of Driving license of R4.
Court Exhibits : NIL

Witness for the Petitioner: NIL

Witness for the Respondents:NIL

O.P(MV) No.1095/2016

MEMO OF COSTS FOR THE PETITIONER

Court Fee	₹	4,549.00
Vakalath	₹	05.00
Document	₹	28.00
Typing & Writing	₹	100.00
Advocate fee	₹	28,279.00

Total	₹	32,961.00 (Allowed)
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O.P(MV) No.1096/2016

MEMO OF COSTS FOR THE PETITIONER

Court Fee	₹	4,146.00
Vakalath	₹	05.00
Document	₹	28.00
Typing & Writing	₹	100.00
Advocate fee	₹	26,263.00

Total	₹	30,542.00 (Allowed)
		=====

<u>O.P(MV) No.2014/2016</u>		
<u>MEMO OF COSTS FOR THE PETITIONER</u>		
Court Fee	₹	35.00
Vakalath	₹	05.00
Document	₹	28.00
Typing & Writing	₹	100.00
Advocate fee	₹	2,000.00

Total	₹	2,168.00 (Allowed)
		=====

<u>O.P(MV) No.2015/2016</u>		
<u>MEMO OF COSTS FOR THE PETITIONER</u>		
Court Fee	₹	35.00
Vakalath	₹	05.00
Document	₹	28.00
Typing & Writing	₹	100.00
Advocate fee	₹	2,000.00

Total	₹	2,168.00 (Allowed)
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MOTOR ACCIDENTS CLAIMS TRIBUNAL

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