

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, ATTINGAL

Present: Sri. Sreekumar.D, Motor Accidents Claims Tribunal

Tuesday 18th NOVEMBER, 2025/ 27th Karthika, 1947.

OP(MV) – 1352/2019

Applicants:-

1. Aiswarya T.Das, W/o Biju S.R, aged 32 years,
Soubhagya, Kollayil, Chithara Village.
2. Ramani. V, W/o Sisupalan, aged 63 years,
Ashtami, Vilayilmoola, Keezhattingal Village,

By Advocate: - Sri. V. Shaji.

Respondents:-

1. Abdul Nasar, S/o Abdul Khadar, Akathoot House,
Edapally North.P.O, Ernakulam.
2. Manu Lenin, S/o Lenin Kutty, Varakakalayil House,
Machiplavu, Machiplavu P.O, Idukki.
3. The Royal Sundaram General Insurance Co. Ltd,
Amritha Towers, II Floor, Opp. Maharaja Grounds,
M.G.road, Kochin.

R1 & R2 :- ex-parte

R3 By Advocate: - Sri. C. Ravindran Unnithan.

This Petition having been finally heard on 17.11.2025 and on 18.11.2025 the Tribunal passed the following:

AWARD

1. Petition filed under section 166 of the Motor Vehicles Act 1988.

2. The petitioner's case is, briefly stated, as follows:- The accident referred to in this case occurred on 14/08/2019 at about 09.15 p.m while the deceased was riding motorcycle bearing registration number KL-16F-7757 from Pothencode towards Venjaramoodu along Pothencode-Venjaramoodu public road. When he reached near Velavur, a car ahead of his vehicle turned towards eastern direction. This time, a heavy goods vehicle bearing registration No.KL-07CJ-8821 driven by the respondent No. 2 in a rash and negligent manner came from the opposite direction and hit the handle of the motorcycle ridden by the deceased. He fell onto the road and the lorry ran over his body. Though he was taken to the Medical College Hospital, Thiruvananthapuram, he succumbed to the injuries. The 1st respondent was the registered owner of the offending vehicle bearing registration number KL-07-CJ-8821. At the time of the accident, it was insured with the 3rd respondent. The accident occurred due to the rash and negligent driving of the 2nd respondent. The petitioner Nos.1 and 2 are the wife and mother respectively of the deceased. They approached this tribunal seeking compensation from the respondents.

3. The respondent Nos. 1 and 2 remained absent despite notice. Hence they were set ex parte.

4. The respondent No. 3 filed a written statement contending mainly as follows:-The original petition is not maintainable either in law or on facts. The 3rd respondent has no knowledge about the alleged accident till the notice from the Tribunal. It is true that at the alleged time of the accident the vehicle bearing registration No.KL-07CJ-8821 was driven by the second respondent. He is the 2nd accused in Venjaramood Police Station Crime No.1123/2019. However the description of the accident stated in the original petition is not correct. The petitioners suppressed the real state of affairs. There was no negligence on the part of the respondent No. 2. The accident occurred due to the negligence of the deceased himself and the driver of the unidentified vehicle involved in the accident. Due to the negligence of the driver of the unidentified vehicle, it hit the motorcycle ridden by the deceased. The 3rd respondent is not liable to pay compensation to the petitioners. In the accident, three vehicles were involved. The parties connected to all the vehicles ought to have been made parties in the original petition. It is true that the vehicle bearing registration No. KL-07-CJ-8821 was insured with the respondent No. 3 covering the date of accident. The petitioners have to prove the age, occupation and income of the deceased. The petitioners have to prove that they are the legal representatives of the deceased. The amounts claimed under various heads of compensation are exorbitant. The original petition is liable to be dismissed.

5. On the basis of the pleadings, the following issues were framed for consideration:-

- (1) Who is responsible for the accident, referred to in this case?
- (2) Was the death of Biju caused due to the injuries suffered in the above accident?
- (3) Are the petitioners entitled to compensation? If so, what shall be the amount?
- (4) Who is liable to pay the compensation, if any ?
- (5) Reliefs and costs.

6. From the side of the petitioners, PW1 was examined and Exts. A1 to A9 were marked. RW1 was examined from the side of the respondent.

7. Heard.

8. **Issue No.(1)** :- For proving the negligence on the part of the 2nd respondent, the petitioners have relied on Exts.A1 to A4 & A7 documents. Ext.A1 is a copy of the FIR registered in Crime No.1123/2019 at Venjaramoodu Police Station on 15/08/2019. Ext.A2 is a copy of the scene mahazar prepared in this connection on 15/08/2019. Ext.A3 series consists of the copies of the mahazars of the vehicle involved in the accident prepared on 19/08/2019 and 20/08/2019. Ext.A4 series consists of the reports of inspection of the vehicles bearing Reg.No.KL-16F-7757 and KL-07CJ-8821 prepared by the AMVI. The motorcycle had extensive

damages and most of them are on the left side. The lorry did not have any noticeable damages. According to these documents, the accident was not a result of any mechanical defect of the vehicles. Ext.A5 is a copy of the final report laid in this case. In Ext.A5 final report, the conclusion of the investigating officer is that the accident occurred due to the rash and negligent driving of the unidentified car by its driver as well as the lorry bearing registration No.KL-07CJ-8821 by the 2nd respondent. The Hon'ble High Court of Kerala in '**New India Assurance Company Ltd Vs. Pazhani Ammal and Others': 2011(3) KHC 595**, has held as follows:

“Prima Facie, charge sheet filed by a police officer after due investigation can be accepted as evidence of negligence against the indictee. If any one of the parties do not accept such a charge sheet, the burden must be on such party to adduce oral evidence. If oral evidence is adduced by any party, in a case where charge sheet is filed, the tribunals 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.”

9. In Ext. A7 charge sheet, the 2nd respondent herein is also made an accused. He is arrayed as accused No. 2. The driver of the unidentified car is the first accused. His whereabouts are not yet ascertained. Hence they are not mentioned in Ext. A7 final report. As per the conclusion of the Investigating Officer while the

deceased was riding his motorcycle from Pothencodu towards Venjaramood direction, near Velavur junction, the car ahead of the deceased's vehicle turned towards right side without showing the indicator and hit the motorcycle ridden by the deceased. The deceased fell onto the road and that time the lorry driven by the 2nd respondent in a rash and negligent manner ran over the body of the deceased and thereby the deceased sustained the fatal injuries. Going by the final report, the Investigating Officer has attributed negligence on the lorry driver as well as the driver of the unidentified car. The allegation of the petitioners is against the lorry driver alone. According to them the accident occurred due to the rash and negligent driving of the lorry driver. Since composite negligence is attributed in the charge sheet, from the side of the petitioners, PW1 Sandeep who claims to have witnessed the accident was examined. He filed a proof affidavit stating that he happened to see the accident while he was riding his motorcycle from Venjaramood towards Pothencode direction. According to him the motorcycle driven by the deceased and the car were ahead of him. In his words, the accident occurred when the car took a deviation towards right and the lorry that came from the opposite direction at an excessive speed lost its control and hit the motorcycle. The motorcycle lost its control and the rider fell under the lorry which ran over his head.

10. During his cross examination he deposed that he was engaged in the work of LED wall. On the date of occurrence, he was working at Thiruvananthapuram and he witnessed the accident while he was returning home at Nagarur. According to him, he was returning home through MC road. When he was asked whether travelling through National Highway would not be easier for him, he deposed that he chose MC Road to avoid traffic blocks. He further deposed that he learnt about the death of the injured from one of his friends named Ajish and accordingly he had attended the funeral of the deceased. There he met the wife of the deceased. Later, the wife of the deceased asked him to give evidence in this case. He could not recall the colour or brand of the motorcycle ridden by the deceased. According to him, to his belief the lorry was an Eicher made one. Though PW1 was subjected to lengthy cross-examination, nothing was brought out to discredit him.

11. From the side of the insurer, the investigating officer was examined as RW1. He maintained his version in the final report. Though he claimed that the motorcycle was caused to be examined by the scientific officer of Rural DCRB for ascertaining whether the car had hit the motorcycle, admittedly no such certificate was verified by him before filing the final report. In my opinion the evidence of PW1, an occurrence witness is standing on a higher pedestal.

12. The **Hon'ble High Court of Kerala in Sherin J.Thankom Vs. Thankom reported in 2014 (3) KLT 44** observed that "in deciding matters arising out of accident cases, the Tribunal should bear in mind the caution struck by the Apex Court that the claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In the claim before the Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal, there must be some material on the basis which the Tribunal can arrive at or decide things necessary to be decided for awarding compensation".

13. In the light of the evidence of PW1, which is not successfully controverted, I find that the petitioners have succeeded in proving that the accident referred to occurred due to the rash and negligent driving of the lorry bearing registration No.KL-07CJ-8821 by the 2nd respondent. Issue No.(1) is found accordingly in favour of the petitioners.

14. **Issue No.(2):-** Ext.A5 is a copy of the inquest report prepared by the Sub Inspector of Police, Venjaramoodu Police Station on the body of the deceased at the mortuary of the Medical College Hospital, Thiruvananthapuram on 20/08/2019. Ext.A6 is a copy of the postmortem certificate dated 15/08/2019 prepared as per the

requisition of the Venjramooud Police in connection with this case. The finding in the postmortem examination of the deceased is that the death was due to the injuries sustained to the head, neck and chest. This document would prove that the death of Biju was caused by the injuries suffered by him in the RTA referred to in this case. Issue No.(2) is found accordingly.

15. **Issue No.(3):-** Ext.A8, the legal heirship certificate dated 20/05/2020 issued by the Tahsildar, Chirayinkeezhu reveals that the 1st petitioner, the wife and 2nd petitioner, the mother of the deceased Biju, are his legal heirs. Therefore, petitioners 1 and 2 being his legal representatives are entitled to claim compensation on account of the death of the deceased. Issue No.(3) is answered accordingly.

16. Now the question remains as to the amount of compensation.

17. According to the petitioners, at the time of the accident, the deceased was a coolie with a monthly income of ₹15,000/-. But there is nothing on record to show his job or to show how much the deceased was earning at the time of the accident. The Hon'ble High Court in **Latheef @ Abdul Latheef V. Noufal P.P reported in 2024 KHC 1687** by referring to G.O.(P) 56/2017/Fin. dated 28/04/2017 and referring to the decision of the Hon'ble Apex Court in **Angad Tiwari and Another V. National Insurance Company Limited and Another** of the Apex

Court in civil appeal No.10950/2024, fixed the notional income of an Agricultural Laborer as ₹17,325/- per month. The above G.O prescribes the minimum wages liable to be paid under the provisions of the Minimum Wages Act 1948 with effect from 01/04/2017. Thus, in the case on hand, a minimum wage of ₹17,325/-can be fixed as notional income.

18. Ext.A9, copy of a Secondary School Leaving Certificate would show that the date of birth of the deceased is 23/04/1975. It means the deceased was 44 years old at the time of his death. Since the deceased was self-employed and aged 44 years, an addition of 40% of his income towards future prospects is warranted in determining the compensation for loss of dependency, in the light of the decision rendered by the **Hon'ble Apex Court in National Insurance Company Ltd., Vs. Pranay Sethi: 2017(4) KLT 662**. Thus, the annual income of the deceased is calculated as:

$$₹17,325 \times 12 = ₹2,07,900/-$$

40% of the same is added towards future prospects:

$$₹2,07,900 \times 40\% = ₹83,160/-$$

Annual Income + addition towards future prospects:

$$₹ 2,07,900 + = ₹2,91,060/-$$

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19. Since the deceased was married and the number of his dependent is 2, 1/3rd of the monthly income is to be deducted towards the personal and living expenses of the deceased while determining above said compensation as per the decision of the Hon'ble Apex Court rendered in '*Sarla Varma's* case cited above. As the petitioner was 44 years old, the multiplier is 14 as per the decision in the light of the **Hon'ble Apex Court in 'Sarla Verma Vs. Delhi Transport Corporation': 2010(2) KLT 802**. The compensation for loss of dependency, after deducting 1/3rd of the amount towards personal and living expenses of the deceased and applying multiplier 14 would be an amount of

$$₹2,91,060 \times 14 \times 2/3 = ₹27,16,560$$

20. As per the decision rendered in *Pranay Sethi case* cited supra, the amount quantified in the conventional heads should be enhanced on a percentage basis in every 3 years and the enhancement should be at the rate of 10% in a span of 3 years. Therefore, enhancement of reasonable figures on conventional heads viz., Loss of Estate, Loss of Consortium and Funeral expense at the rate of 20% (10% in a span of 3 years) is warranted as laid down therein by the Hon'ble Apex Court. Accordingly, ₹18,150/- is granted as 'Funeral expense', ₹48,400/- is granted to petitioner No.1 as Spousal Consortium and ₹48,400/- is granted to petitioner No.2,

the mother of the deceased as 'Filial Consortium' and ₹18,150/- is granted as compensation under the head 'Loss of Estate'.

21. The Hon'ble High Court of Kerala in **Kunjandi Vs. Rajendran:2020(2) KLT 315**, has held as follows:- "*Once the surviving spouse is awarded compensation towards spousal consortium, or the children of the deceased are awarded compensation towards parental consortium or the parents of the deceased child are awarded compensation towards filial consortium, they are not entitled for award of further compensation under the head loss of love and affection, as it would result in duplication or overlapping of compensation under the relevant heads*". As the petitioners have already been awarded compensation under the head 'Loss of Consortium', I am not inclined to award any amount under the head 'Loss of love and affection' in the light of the above said decision of the Hon'ble High Court of Kerala.

22. An amount of ₹1,500/- is also awarded as compensation for 'Damages to clothing'.

23. The Hon'ble High Court of Kerala in '**Jyni and Others Vs. Raphael P.T. and Others : 2016(2) KHC 870**', has held as follows:- "*In cases of instantaneous death as well as cases where the deceased was unconscious between*

the time of accident and the time of his death, some notional amount is payable under the head pain and suffering. A slightly higher amount can be awarded under this head, if death is not instantaneous. Therefore, a conventional amount in the range of Rs.5,000/- to Rs.15,000/- could be awarded under the head pain and suffering in such cases.' Ext.A7 final report reveals that the death of the deceased occurred on the same day. Considering the said fact, I am inclined to award an amount of ₹5,000/- under the head 'Pain and suffering' in the light of the said decision reported in 2016(2) KHC 870.

24. ₹5,000/- is awarded as 'Transport expense'.

25. Thus, petitioners are entitled to get a total compensation of **₹28,61,200/-(Rupees Twenty Eight Lakh Sixty One Thousand Two Hundred Only)** is awarded as shown in the table below:

<i>Sl. No.</i>	<i>Head of claim</i>	<i>Amount claimed (in Rupees)</i>	<i>Amount awarded (in Rupees)</i>	<i>Basis-Vital Details in a nut shell</i>
<u>Part-I</u>				
1	Loss of earning		Nil	
2	Partial Loss of Earning	-	Nil	
3	Transport to hospital Ambulance charges	50,000	5,000	Travel to and from the hospital

4	Extra Nourishment	Nil	Nil	
5	Damages to Clothing	2,000	1,500	
6	Medical Expenses	Nil	Nil	
7	Funeral expenses	50,000	18,150	
8	Bystander expense Charge	Nil	Nil	
<u>Part-II</u>				
8	Compensation for Pain and suffering	1,00,000	5,000	Considering the fact that the death of the deceased occurred on the same day.
9	Compensation for Loss of love and affection	2,00,000	Nil	-
10	Compensation for Loss of dependency	25,00,000	27,16,560	2,91,060 x 14x 2/3
11	Compensation for loss of earning power	Nil		
12	Compensation for Loss of Estate	1,00,000	18,150	-
13	Compensation for Loss of spousal consortium	1,00,000	48,400	The 1 st petitioner and is the wife of the deceased.
14	Compensation for Loss of filial consortium	Nil	48,400	The 2 nd petitioner and is the mother of the deceased.
(Claim limited to ₹25,00,000/-)		31,02,000 =====	₹28,61,160/- =====	
Total award amount				

Rounded off	₹28,61,200/- =====
(Rupees Twenty Eight Lakh Sixty One Thousand Two Hundred Only)	

26. In the matter of apportionment, the award amount with interest and cost is apportioned in the ratio 7:3 among petitioner Nos.1 and 2.

27. The compensation awarded by the Tribunal has exceeded the claim of the petitioners in the original petition. But as the duty of the Tribunal is to award just compensation, there is no impropriety in awarding compensation higher than what is claimed by the petitioner in the light of the decision rendered by the Hon'ble Apex Court in '**Ramla Vs. National Insurance Company Ltd., cited in 2019 (2) SCC 192**'. Issue No.(3) is answered accordingly.

28. **Issue No.(3):-** I have already found that the accident took place due to the negligent driving of the lorry bearing registration No.KL-07CJ-8821, by the 2nd respondent. Hence, the 2nd respondent is liable to pay compensation to the petitioners. The 1st respondent, who is undisputedly the owner of the offending lorry, is therefore vicariously liable to compensate the petitioners. It is admitted by the 3rd respondent that the lorry was insured with the 3rd respondent at the time of the accident. In the absence of any material showing violation of conditions of the insurance policy, I hold that the 3rd respondent, insurer is liable to satisfy the award

by indemnifying the 1st respondent, the owner of the lorry. Issue No.(3) is answered accordingly.

29. **Issue No.(4):- In view of my findings on Issue Nos.(1), to (3) the petition is allowed in part and an award is passed as follows:**

(1) Respondent Nos. 1 and 2 are jointly and severally is liable to pay an amount of **₹28,61,200/-(Rupees Twenty Eight Lakh Sixty One Thousand Two Hundred Only)** to the petitioner with interest at the rate of 8% per annum from the date of petition [14/10/2019] till realization or payment with proportionate costs.

(2) The 3rd respondent is directed to deposit the awarded sum directly to the credit of the Savings Bank Account of

(i) Aiswarya T Das (1st petitioner), A/c No.10570100299130
of Federal Bank, Kadakkal Branch with
IFSC Code:FDRL0001057and PAN No.EATPD1086R.

(ii) Ramani (2nd petitioner), A/c No.077901000000367
of Indian Overseas Bank,Keezhattingal Branch
with IFSC Code:IOBA0000779, and PAN No.HJUPR2053A.

as per the details furnished by the petitioners and send a copy of that payment advice to this Tribunal and also serve a copy of the same to petitioners or their counsel, as required by Hon'ble High Court in its Circular No.01/2025 dated

19/09/2025. In case of TDS. form 16-A of Income Tax Act 1961 shall be provided to the petitioners to enable them to seek refund of tax deducted.

(3) Upon deposit being made, 3rd respondent shall submit to the Tribunal a copy of the bank advice and a memo in the prescribed format. A copy of payment advice, along with a copy of memo shall also be served on the contesting parties and their respective counsel, if any.

(4) The 3rd respondent shall produce cheques for ₹27,985/- and ₹28,612/- respectively as court fee and additional court fee towards legal benefit fund in the name of MACT, Attingal, payable in the case.

(5) The office is directed to make necessary entries in the registers maintained in the office evidencing payment of amount to the petitioner.

(6) The 3rd respondent is directed to pay the amount within one month failing which the petitioner can recover the same in accordance with law.

*Dictated to the C.A., transcribed and typed by her, corrected by me
and pronounced in open court on the 18th day of November, 2025.*

Sd/-
SREEKUMAR.D
MOTOR ACCIDENTS CLAIMS TRIBUNAL.

APPENDIX**Exhibits for the Applicant:**

- A1 15.08.2019 : Copy of FIR and FIS Crime No.1123/2019,
Venjaramoodu Police Station.
- A2 15.08.2019 : Copy of Scene Mahazar
- A3 20.08.2019 : Copy of Seizure Mahazar
- A4 series : Copy of AMVI Report
- A5 15.08.2019 : Inquest Report
- A6 15.08.2019 : Post-mortem Certificate
- A7 30.09.2019 : Copy of Final Report
- A8 20.05.2020 : Copy of Legal Heirship Certificate
- A9 : Copy of SSL Certificate

Exhibits for the Respondent: NIL

Court Exhibits: Nil

Witness for Both Sides:

- PW1 13.02.2025 : Sandeep. S
- RW1 07.08.2025 : Purushothaman Nair. M

Id/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

MEMO OF COSTS**Cost for the Applicant:**

- Court fee and Additional Court fee Rs. 56,597/-
- Petition fee Rs. 25/-
- Vakalath fee Rs. 5/-
- Process fee Rs. 90/-

Document fee	Rs. 14/-
Advocate fee (As per certificate)	Rs. 60,724/- (Certificate produced)

Total	Rs. 1,17,455/- (Order for realization)
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Cost for the Respondents:

Vakalath fee	Rs. 5/-
Total	Rs. 5/- (No order for realization)

Sd/-

MOTOR ACCIDENTS CLAIMS TRIBUNAL

//True Copy//

Sd/-

SHERISTADAR.

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: jr

Compared by: raji

FCS:

***COPY OF AWARD IN OP (MV)1352/2019
DATED:18.11..2025.***