



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

MACA NO. 205 OF 2011

AGAINST THE AWARD DATED 06.08.2010 IN OP(MV) NO.1448 OF 2005 OF II ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.
KOLLAM, REPRESENTED BY ITS ASSISTANT MANAGER,, REGIONAL
OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS/CLAIMANTS:

- 1 VIJAYAMMA, W/O. VISWANADHAN,
PADIYANA VADAKKATHIL, NADUVATHU CHERRY MURI,, CHAVARA
SOUTH P.O., THEKKUMBHAGOM VILLAGE,, KOLLAM DISTRICT,
KERALA STATE, PIN 691 584.
- 2 ANJU, D/O.VIJAYAMMA,
PADIYANA VADAKKATHIL, NADUVATHU CHERRY MURI,, CHAVARA
SOUTH P.O., THEKKUMBHAGOM VILLAGE, KOLLAM DISTRICT, KERALA
STATE, PIN 691 584.
- 3 VISWANADHAN.K. S/O.KUTTAPPAN
PADIYANA VADAKKATHIL, NADUVATHU CHERRY MURI,, CHAVARA
SOUTH P.O., THEKKUMBHAGOM VILLAGE, PIN 691 584, KOLLAM
DISTRICT, KERALA STATE.
- 4 SHAJI.B, (DIED)
S/O BALAN PILLAI, QUILON TOURIST HOME, MAIN ROAD, KOLLAM &
NOW, RESIDING AT LAVANYA, M.G.STREET,, THAMARAKKULAM MURI,
EAST VILLAGE, KOLLAM,, PIN 691 001.
- 5 SHYAM, S/O BALAN PILLAI,
NOW RESIDING AT INDUJA'S HOUSE,, MANAYIKULANGARA, KOLLAM-
691 001.

(R5 IS RECORDED AS THE LEGAL REPRESENTATIVE OF DECEASED R4
VIDE ORDER DATED 4/4/24 IN MEMO DATED 30/3/2024 IN MACA
205/2011)

M.A.C.A No. 205/2011 & batch

: 2 :



2024:KER:86867

BY ADVS.
R1 TO R3 BY SMT. I.S.LAILA
R5 BY SRI. R.RENJITH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 18.11.2024, ALONG WITH M.A.C.A. NO. 209 OF 2015 & CO. NOS. 69/2015 AND 84/2015, THE COURT ON 21.11.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

CO NO. 84 OF 2015

AWARD DATED 06.08.2010 IN OP(MV) NO.1448 OF 2005 OF II
ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

CROSS OBJECTORS/RESPONDENTS 1 TO 3/PETITIONERS:

- 1 VIJAYAMMA, AGED 56 YEARS, W/O.VISWANADHAN, PADIYANA
VADAKKATHIL, NADUVATHU CHERRY MURI, CHAVARA SOUTH P.O.,
THEKKUMBHAGOM VILLAGE, KOLLAM DISTRICT, KERALA STATE
- 2 ANJU, AGED 25 YEARS,
D/O.VIJAYAMMA, -DO- -DO-.
- 3 VISWANADHAN.K, AGED 58 YEARS,
S/O.KUTTAPPAN, -DO-. -DO-.

SMT. I.S. LAILA

RESPONDENTS/APPELLANT AND RESPONDENTS 4 & 5/RESPONDENTS:

- 1 THE DIVISIONAL MANAGER
THE ORIENTAL INSURANCE CO. LTD. DIVISIONAL OFFICE, AMJYOTHI
COMPLEX, KADAPPAKADA, KOLLAM.
- 2 SHAJI.B., S/O.BALAN PILLAI, QUILON TOURIST HOME, MAIN ROAD,
KOLLAM & NOW RESDING AT LAVANYA, M.G.STREET,
THAMARAKKULAM MURI, EAST VILLAGE, KOLLAM.
- 3 SHYAM
S/O.BALAN PILLAI, NOW RESIDING AT INDUJA'S HOUSE,
MANAYIKULANGARA, KOLLAM.

R1 BY ADV SRI.R.RENJITH

THIS CROSS OBJECTION/CROSS APPEAL HAVING BEEN FINALLY HEARD ON
18.11.2024, ALONG WITH MACA.205/2011 AND CONNECTED CASES, THE COURT
ON 21.11.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

MACA NO. 209 OF 2011

AGAINST THE AWARD DATED 06.08.2010 IN O.P(MV) NO.211 OF 2006 OF
MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.
KOLLAM, REPRESENTED BY ITS ASSISTANT MANAGER, REGIONAL
OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT/CLAIMANT:

- 1 RAPHEL CARDOZ, S/O. RICHARD CARDOZ, EMILI COTTAGE,
THEKKUMBHAGOM MURI, CHAVARA, SOUTH.P.O., THEKKUMBHAGOM
VILLAGE, KOLLAM DISTRICT, KERALA STATE. PIN-691 001.
- 2 SHAJI.B. (DIED)
S/O. BALAN PILLAI, QUILON TOURIST HOME, MAIN ROAD, KOLLAM &
NOW, RESIDING AT LAVANYA, ,M.G.STREET, THAMARAKKULAM,
MURI, EAST VILLAGE, KOLLAM-691 001.
- 3 SHYAM, S/O. BALAN PILLAI, NOW RESIDING AT INDUJA'S HOUSE,
MANAYILKULANGARA,, KOLLAM-691 001.

(R3 IS RECORDED AS THE SOLE LEGAL REPRESENTATIVE OF
DECEASED R2 VIDE ORDER DATED 04.04.2024 IN MEMO DATED
30.03.2024 IN MACA 209/11

BY ADVS.
R1 BY SRI.V.PREMCHAND
R3 BY SRI. R.RENJITH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
18.11.2024, ALONG WITH MACA.205/2011 AND CONNECTED CASES, THE COURT
ON 21.11.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

CO NO. 69 OF 2015

AWARD DATED 06.08.2010 IN O.P(MV) NO.211 OF 2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

CROSS OBJECTOR/1ST RESPONDENT:

RAPHEL CARDOZ,
AGED 43 YEARS,
S/O.RICHARD CARDOZ, EMILI COTTAGE, THEKKUMBHAGOM MURI,
CHAVARA SOUTH P.O., THEKKUMBHAGOM VILLAGE, KOLLAM
DISTRICT, KERALA STATE.

SRI. V. PREMCHAND

RESPONDENTS/APPELLANT AND RESPONDENTS 2 & 3/RESPONDENTS:

- 1 THE DIVISIONAL MANAGER,
THE ORIENTAL INSURANCE CO.LTD., DIVISIONAL OFFICE,
AMAJYOTHI COMPLEX, KADAPPAKADA, KOLLAM – 691 013.
- 2 SHAJI.B.
S/O. BALAN PILLAI, QUILON TOURIST HOME, MAIN ROAD, KOLLAM &
NOW RESIDING AT LAVANYA, M.G.STREET, THAMARAKKULAM, MURI,
EAST VILLAGE, KOLLAM – 691 210.
- 3 SHYAM
S/O. BALAN PILLAI, NOW RESIDING AT INDUJA'S HOUSE,
MANAYILKULANGARA,, KOLLAM – 690 519.

BY ADVS.
SRI.GEORGE CHERIAN (SR.)
R1 BY SRI.R.RENJITH
SMT.K.S.SANTHI

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THIS CROSS OBJECTION/CROSS APPEAL HAVING BEEN FINALLY HEARD ON 18.11.2024, ALONG WITH MACA.205/2011 AND CONNECTED CASES, THE COURT ON 21.11.2024 DELIVERED THE FOLLOWING:



JOHNSON JOHN, J.

M.A.C.A No. 205 of 2011 & Cross Objection 84 of 2015
&
M.A.C.A No.209 of 2011 & Cross Objection No.69 of 2015

Dated this the 21st day of November, 2024.

J U D G M E N T

The 3rd respondent/Oriental Insurance Company Limited filed the above appeals as against the award in O.P(MV) Nos.1448 of 2005 and 211 of 2006 on the file of the Motor Accidents Claims Tribunal, Kollam on the ground that the insured vehicle was not involved in the accident. Respective claimants filed cross objections challenging the quantum of compensation fixed by the Tribunal on the ground that the same is inadequate.

2. The petitioners in O.P(MV) No.1448 of 2005 are the legal heirs of the deceased Ajikumar, who was travelling as a pillion rider in the motor cycle ridden by the petitioner in the connected O.P(MV) No.211 of 2006 on 12.08.2005 at about 8.15 p.m., and when they reached Kottukad junction, Maruthi car bearing registration No.KL02/R-3468 driven by the 2nd respondent in a rash and negligent manner caused to hit the motor cycle and both the rider and the pillion rider sustained serious injuries and subsequently, the pillion



rider succumbed to his injuries while undergoing treatment in the hospital on 16.08.2005.

3. In the original written statement dated 23.04.2009, the appellant/insurance company stated that the Maruthi car involved in the accident was insured with the 3rd respondent covering the date of accident. But, subsequently, an additional written statement was filed on 30.01.2010 stating that on enquiry and upon verification of the criminal case records, it is understood that the vehicle involved in the accident was substituted during the course of investigation. It is stated that the vehicle which caused the accident is a Maruthi Esteem car bearing registration No.KL-17/A-117.

4. The Tribunal conducted joint trial, and from the side of the petitioners, PWs 1 and 2 were examined and Exts.A1 to A18 were marked. No evidence was adduced from the side of the respondents.

5. After trial and hearing both sides, the Tribunal found that Maruthi car bearing registration No.KL-02/R-3468 driven by the 2nd respondent in a rash and negligent manner caused to hit the motor bike and therefore, the respondents are jointly and severally liable to pay the compensation. In O.P(MV) No.1448 of 2005, the Tribunal awarded a total compensation of Rs.5,91,150/-. The Tribunal awarded a total compensation of Rs.20,575/- to the petitioner in



O.P(MV) No.211 of 2006. In both the appeals, the contention of the appellant is that the insured vehicle is not involved in the accident and therefore, the appellant/insurance company is not liable to pay the compensation. In the respective cross objections, the claim petitioners are contending that the compensation fixed under various heads are inadequate.

6. Heard Sri.George Cherian, the learned counsel appearing for the appellant and Smt. I.S. Laila and Sri. V. Premchand, the learned counsel appearing for the cross objectors.

7. The learned counsel for the appellant argued that in Ext.A1 FIR, the vehicle involved in the accident is shown as Maruthi Esteem car bearing registration No. KL-17/A-117 and in Ext.A6 final report, the registration number of the offending vehicle is stated as Maruthi 800 car bearing registration KL- 2/R 3468. It is not in dispute that Maruthi 800 car bearing registration No.KL-2R/3468 was insured with the appellant/insurance company at the time of the accident. But, the contention of the appellant is that the actual vehicle involved in the accident is Maruthi Esteem car bearing registration No.KL17/A-117 mentioned in the FIR and at the time of filing the final report, the Investigating Officer substituted the insured vehicle as the offending vehicle and therefore, the Tribunal erred in accepting the final report



filed by the Investigating Officer to arrive at a finding that the insured vehicle is involved in the accident.

8. The learned counsel for the cross objectors pointed out that the First Information Statement attached to Ext.A1 FIR would show that the informant has mentioned the registration number of the offending vehicle on the basis of hearsay information. It is also pointed out that in Ext.A6 final report, it is specifically stated that during the course of investigation, it is revealed that vehicle bearing registration No.KL17/A-117 is not involved in the accident and the actual vehicle involved in the accident is vehicle bearing registration No.KL02/R-3468 and that a report in this regard is also filed before the jurisdictional Magistrate Court during the course of investigation.

9. In New ***India Assurance Co.Ltd. v. Pazhaniammal and Others (2011(3) KHC 595)***, this Court held that as a general rule, production of the police charge sheet is *prima facie* sufficient evidence of negligence for the purpose of a claim under Section 116 of the Motor vehicles Act. In the said decision, it was also held that if any one of the parties do not accept such charge sheet, the burden must be on such party to adduce oral evidence and 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. It was further held that in all other cases, such charge sheet can be reckoned as sufficient evidence of negligence in a claim under Section 166 of the Motor Vehicles Act.

10. As noticed earlier, in this case, the Tribunal accepted Ext.A6 final report to arrive at a conclusion that the insured vehicle is involved in the accident and that the accident occurred because of the negligence on the part of the driver of the insured vehicle. It is pertinent to note that the appellant/insurance company has not adduced any evidence before the Tribunal to challenge the conclusion drawn by the Investigating Officer in Ext.A6 final report. In that circumstance, I find no error or illegality on the part of the Tribunal in recording a finding regarding negligence and involvement of the insured vehicle in the accident on the basis of Ext.A6 Final Report.

11. The appellant/insurance company filed IA No.4362 of 2016 under Order 41 Rule 27 CPC to receive additional evidence in appeal. Along with the said petition, certified copy of the judgment in C.C No. 1374 of 2005 of Judicial First Class Magistrate Court, Karunagalpally and the certified copies of the depositions of the witnesses examined in the said case are produced. In the affidavit in



support of the petition, it is stated that the petitioner/company has obtained certified copies of the documents in the criminal case and the same is produced. No other reason as required under Order 41 Rule 27 CPC, is stated in the affidavit in support of the petition. The learned counsel for the cross objectors pointed out that the party seeking to produce additional evidence has to establish that notwithstanding the exercise of due diligence, such evidence was not within the knowledge of the party or the party could not produce the same at the time when the impugned award was passed and there is no such averment in the affidavit in support of the petition to satisfy the said requirements. It is also pointed out that the judgment of the Magistrate court is dated 12.12.2008 and the impugned award is dated 06.8.2010 and therefore, it is clear that the documents now produced as additional evidence were available at the time of the trial of this case before the Tribunal. As per Section 43 of the Indian Evidence Act, judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue or is relevant under some other provision of the Evidence Act.

12. It is true that in terms of Order 41 Rule 27 CPC, this Court is having the power to receive additional evidence at the



appellate stage. However considering the nature of the documents sought to be produced and in the absence of averments in the affidavit to satisfy the requirements of Order 41 Rule 27 CPC, I find that the petition is liable to be dismissed and consequently I.A No.4362 of 2016 is dismissed.

13. The decision of the Hon'ble Supreme court in ***Mathew Alexander v. Muhammed Shafi (2023 INSC 621)*** shows that strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants and that the claimants need only to establish their case on the touchstone of preponderance of probabilities. In the said case, it was also held that the standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. As noticed earlier, the appellant insurance company has not adduced any evidence before the Tribunal to challenge the conclusion of the Investigating Officer in Ext.A6 final report regarding the involvement of the insured vehicle and negligence on the part of the driver of the insured vehicle. In that circumstance, I find that both the appeals are devoid of merit and are liable to be dismissed.

14. Now, what remains to be considered is the challenge



regarding the quantum of compensation fixed by the Tribunal under various heads.

15. The petitioners in O.P(MV) No.1448 of 2005 filed Cross Objection No.84 of 2015. The deceased was aged 23 years and the Tribunal fixed Rs.5000/- as his notional income. The decision of the Hon'ble Supreme Court in ***Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. [(2011) 13 SCC 236]*** and ***Syed Sadiq and Others v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735 = 2014 KHC 4027]*** shows that even in the absence of any evidence, the monthly income of an ordinary worker has to be fixed as Rs.4,500/- in respect of the accident occurred in the year 2004 and for the subsequent years, the monthly income could be reckoned by adding Rs.500/- each per year. If the monthly income of the deceased is calculated by adopting the above principle, it will come to Rs.5,000/- as the accident occurred in the year 2005. In the absence of any evidence to prove the monthly income claimed, I find no reason to interfere with the notional income fixed by the Tribunal in this case.

16. The decision of the Hon'ble Supreme Court in ***National Insurance Co.Ltd. v Pranay Sethi [(2017) 16 SCC 680]*** and ***Jagdish v. Mohan [(2018) 4 SCC 571]*** shows that the benefit of



future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals and in case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years.

17. The decision of the Honourable Supreme Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** shows that the multiplier to be applied for persons aged between 21-25 years is 18 and when the deceased is unmarried, it is necessary to deduct 50% of the income towards personal and living expenses of the deceased.

18. The learned counsel for the cross objectors pointed out that the Tribunal fixed the multiplier as 13 and the same is not justifiable, in view of the decision of the Honourable Supreme Court in **Sarla Varma** (supra). Thus while re-assessing the compensation for loss of dependency as per the revised criteria, the amount would come to Rs.7,56,000/- $[(5000 + 40\%) \times \frac{1}{2} \times 12 \times 18]$.

19. The decision of the Hon'ble Supreme Court in **Pranay Sethi (Supra)** would show that the reasonable amount payable 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 and that the aforesaid amount should be enhanced by 10% in every three years. The Hon'ble Supreme Court in ***Rojalini Nayak & Ors v. Ajit Sahoo (2024 KHC Online 8300)*** by adopting the above metric awarded a compensation of Rs.48,400/- towards loss of consortium and Rs.18,150/- each towards funeral expenses and loss of estate. Therefore, the amount awarded by the Tribunal towards funeral expenses and loss of estate will be modified to Rs.18,150/- each and the parents of the deceased will also be entitled for Rs.48,400/- each towards loss of consortium. In view of the compensation granted towards loss of consortium, the petitioners are not entitled for separate compensation for loss of love and affection.

20. In conclusion, the enhanced amount of compensation, as modified as a result of the above discussion is encapsulated, in a tabular format herein below:

Sl. No	Particulars	Compensation awarded by the Tribunal (Rs.)	Final Amount Payable (Rs.)
1	Transportation Expense	2000/-	2,000/-
2	Damage to clothing etc.	500/-	500/-



3	Medical expense	45,650/-	45,650/-
4	Funeral expense	3000/-	18,150/-
5	Loss of dependency	5,20,000/-	7,56,000/-
6	Loss of love and affection	10,000/-	NIL
7	Loss of estate	5000/-	18,150/-
8	Pain and suffering	5000/-	5,000/-
9	Loss of consortium	NIL	96,800/-
	Total amount Payable		9,42,250/-

Thus, the total amount of compensation payable to the petitioners in O.P(MV) No. 1448 of 2005 (Cross Objection No. 84 of 2015) is Rs.9,42,250/-.

21. Cross Objection No. 69 of 2015 in M.A.C.A No. 209 of 2011 is filed by the claim petitioner in O.P.(MV) No. 211 of 2006. The learned counsel for the cross objector argued that the Tribunal fixed only Rs.4000/- as national income and I find that by following the principles laid down by the Honourable Supreme Court in **Ramachandrappa** and **Syed Sadiq** (supra), his monthly income can be fixed at Rs.5000/-.

22. The learned counsel for the cross objector also pointed out that from Exhibit A8 discharge card, it can be seen that the petitioner



sustained fracture on upper jaw and loss of left upper central incisor. Even though the petitioner has not sustained any functional disability, I find force in the argument of the learned counsel for the cross objector that the compensation fixed by the Tribunal towards loss of pain and sufferings is only Rs.10,000/- and the same is on the lower side. Therefore, considering the nature of injuries and treatment, I find that an additional compensation of Rs. 10,000/-can be granted towards loss of pain and sufferings.

23. When the loss of earning for 7 days is calculated as per the revised national income, the petitioner/cross objector will be entitled for an additional sum of Rs.1,166/-. I find no reason to interfere with the amount fixed by the Tribunal under other heads, as the same is just and reasonable. Accordingly, the petitioner in O.P.(MV) No. 211 of 2006 (Cross Objection No. 69 of 2015) is entitled to the enhanced compensation as given below:

Particulars	Compensation awarded by the Tribunal (Rs.)	Additional amount granted by this Court (Rs.)
Loss of earnings	700/-	1166/-



Pain and sufferings	10,000/-	10,000/-
Total enhanced compensation		11,166/-

24. In the result, M.A.C.A. Nos. 205 and 209 of 2011 are dismissed and Cross Objection Nos. 84 and 69 of 2015 are allowed as follows:

1) The petitioners in O.P (MV) No. 1448 of 2005 (Cross Objection No. 84 of 2015) are allowed to recover the compensation amount of Rs.9,42,250/- with interest at the rate of 9% per annum from the date of the application till realization with proportionate costs in the case. The claimants shall furnish the details of the bank account to the insurance company for transfer of the amount.

(2). The petitioner in O.P.(MV) No. 211 of 2006, who is the cross objector in Cross Objection No. 69 of 2015 is allowed to recover Rs.11,166/- as enhanced compensation. The said amount shall carry interest at the rate of 9% per annum from the date of the application till realization with proportionate costs in the case. The claimants shall furnish the details of the bank account to the insurance company for transfer of the amount.

sd/-

JOHNSON JOHN, JUDGE.