IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

MONDAY, THE 28TH DAY OF JULY 2025 / 6TH SRAVANA, 1947

MACA NO. 346 OF 2022

AGAINST THE AWARD DATED 26.10.2021 IN OPMV NO.511 OF 2017 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA

APPELLANTS/PETITIONERS:

1 BINDHU VARGHESE, AGED 42 YEARS,
W/O.ABRAHAM VARGHESE, MEPPURATHU HOUSE,
ANAPPARA, PATHANAMTHITTA - 683 577.

2 NEETHU VARGHESE, AGED 16 YEARS
D/O.ABRAHAM VARGHESE, MINOR,
MEPPURATHU HOUSE, ANAPPARA,
PATHANAMTHITTA - 683 577.

3 GEETHU VARGHESE, AGED 15 YEARS
D/O.ABRAHAM VARGHESE, MINOR,
MEPPURATHU HOUSE, ANAPPARA,
PATHANAMTHITTA- 683 577.

4 PREETHU VARGHESE, AGED 11 YEARS
D/O.ABRAHAM VARGHESE, MINOR,
MEPPURATHU HOUSE, ANAPPARA,
PATHANAMTHITTA- 683 577.
(APPELLANTS 2 TO 4 MINORS REPRESENTED BY THEIR MOTHER AND GUARDIAN, BINDHU VARGHESE, THE 1ST APPELLANT).

BY ADV SHRI.A.N.SANTHOSH

RESPONDENT/2ND RESPONDENT:

THE DIVISIONAL MANAGER,
NEW INDIA ASSURANCE COMPANY LTD.,
T.P.HUB, KHAISE BUILDING, BEACH ROAD,
OPP. BENZIGAR HOSPITAL, KOLLAM - 691 001.

BY ADV SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN COME UP FOR HEARING ON 13.06.2025, THE COURT ON 28.07.2025 DELIVERED THE FOLLOWING:

"C.R."

J U D G M E N T

The claimants in O.P.(MV).No. 511 of 2017 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta, have preferred this appeal seeking enhancement of the compensation awarded by the tribunal on account of the death of one Abraham Varghese, who died in a motor accident that occurred on 27.12.2016.

2. The brief facts of the case are as follows:-

On 27.12.2016, while the deceased, Sri. Abraham Varghese was driving an autorickshaw bearing registration No.KL-03-AA-2959, through Pathanamthitta - Kozhenchery public road, and when reached at Elathoor junction, another autorikshaw bearing registration No.KL-03/S/4523, driven by the 1st respondent in a rash and negligent manner, and at an excessive speed, hit the rear side of the autorishaw driven by Sri. Abraham Varghese. Due to the impact of the hit, Abraham Varghese sustained grievous head injuries, and he succumbed to the same on the way to the hospital.

3. The owner-cum driver of the autorikshaw bearing registration No.KL-03/S/4523 was arrayed as the 1st respondent, whereas the insurer was arrayed as the 2nd respondent. The 2nd respondent, the insurance company, contested the petition by filing a written statement primarily disputing the quantum of compensation awarded, despite admitting insurance coverage for the autorikshaw involved in the accident. In the written statement, the 2nd respondent took a specific contention that if the claimants had received any amount as compensation under the personal accident coverage from the insurer of the deceased's vehicle, the said amount shall be deducted from the total compensation payable in the present claim.

4. During the trial, the 1st petitioner, who is none other than the wife of the deceased, was examined as PW1 and produced documentary evidence marked as Exts. A1 to A16. From the side of the respondents, no evidence whatsoever was produced.

5. Upon appreciation of evidence on record, the tribunal came to the conclusion that the accident occurred

solely due to the rash and negligent driving of the autorikshaw bearing registration No.KL-03/S/4523 by the 1st respondent, and being the insurer, the 2nd respondent was held liable to pay the compensation. The compensation was quantified at Rs.18,51,300/-, with interest at the rate of 9% per annum from the date of the petition till realisation and proportionate costs. However, the tribunal, while arriving at the said compensation, deducted an amount of Rs.2,00,000/-, the sum received by the claimants under the personal accident coverage from the insurer of the autorickshaw bearing registration No.KL-03-AA-2959, which was owned and driven by the deceased at the time of the accident. Aggrieved by the quantum of compensation awarded, particularly by the deduction of the said Rs.2,00,000/-, the claimants have preferred the present appeal seeking enhancement of the compensation amount.

6. Heard Sri. A.N. Santhosh, the learned counsel appearing for the appellants and Sri.John Joseph Vettikkad, the learned counsel appearing for the respondent.

7. The learned counsel for the appellants submitted that the tribunal erred in deducting the sum of Rs.2,00,000/-, which was received by the appellants under the compulsory personal accident coverage attached to the insurance policy of the autorikshaw owned and driven by the deceased at the time of the accident. According to the counsel, the said amount was paid to the appellants pursuant to a separate and independent contract between the deceased and the insurer, and hence the tortfeasor or his insurer would not be entitled to get benefit of the said compensation paid. It is further submitted that the compulsory personal accident coverage was introduced as a social security measure, and its proceeds are intended to operate independently of the compensation payable in a motor accident claim. According to the counsel, the statutory liability under the Motor Vehicles Act cannot be watered down on the basis of any contractual agreement between the deceased and the insurer of his vehicle.

8. Per contra, the learned counsel appearing for the respondent, the insurance company contended that the

deduction of Rs.2,00,000/- is perfectly justifiable and is in consonance with the legal principles laid down by the Hon'ble Supreme Court in **United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others** [2002 (6) Supreme Court Cases 281]. According to the counsel, the amount received by the claimants on account of compulsory personal accident coverage from the insurer of the deceased's vehicle is liable to be deducted from the compensation awardable to the claimants for the death of the deceased in the motor vehicle accident. The counsel further urged that since this amount is directly related to the death of the deceased, which occurred in a motor vehicle accident, the same is liable to be deducted from the compensation awardable to the claimants in a petition filed under Section 166 of the Motor Vehicles Act.

9. From the rival contentions raised, it is gatherable that the core issue that arises for determination in this appeal is whether the amount received by the claimants under the compulsory personal accident coverage of the deceased's vehicle is liable to be deducted from the

compensation awardable in a claim petition filed under Section 166 of the MV Act. Before delving into a discussion regarding the said issue, it is to be borne in mind that the primary object of awarding compensation in a motor accident claim is to put the injured person in a position that he or she was or would have been, had the unforeseen eventuality of an accident not occurred. Likewise, in cases involving death, while the compensation may serve as a form of solace or financial support for the bereaved family, it cannot serve as a complete or perpetual substitute for the loss of their close relative. Therefore, the tribunal, while adjudicating such claims, is duty-bound to ensure that the compensation awarded is reasonable and adequate to compensate the loss suffered by the claimants.

10. The learned counsel for the respondent, in support of his contention that the amount paid under compulsory personal accident coverage is deductible from the compensation awardable under Section 168 of the Motor Vehicles Act, placed reliance on the analogy of the deductions allowed in cases involving mediclaim insurance.

According to the learned counsel, when a claimant receives a reimbursement for medical expenses under a mediclaim policy, the same is usually deducted from the total compensation awarded in a motor accident claim under the head of medical expenses. He argued that since the insurer is entitled to seek a set off for the amount paid towards medical bills under a mediclaim policy in respect of the same injury, a similar principle should apply to the amounts paid under personal accident coverage.

11. However, this Court is of the considered view that the analogy sought to be drawn by the learned counsel for the respondent is misplaced. Mediclaim reimbursements are generally made for specific expenses, such as hospital bills, which can be quantified and directly linked to a corresponding claim under the same head in the compensation awarded in the motor accident claim petition. In such cases, to prevent duplication of compensation for the same pecuniary loss, deduction of the amount received towards medical expenses pursuant to a mediclaim policy is deductible, and the same is justifiable. In contrast,

personal accident coverage, like life insurance, provides a fixed amount upon death or specified injuries, independent of the actual expenses or losses incurred.

12. In **Mariamma James and others v. Alphons Antony and others** [2017 (1) KHC 344], the Division Bench of this Court made it abundently clear that to justify the deduction of an amount from the compensation payable under Section 168 of MV Act, there must be a clear correlation between the amount received and the loss or expenses being compensated. In the said case, the court considered a scenario where the deceased had sustained injuries in an accident and subsequently succumbed to those injuries while undergoing treatment. The court made it clear that in a case where an amount was incurred towards medical expenses for the injuries sustained in an accident to which he succumbed later, there is a correlation between the amount received and the accidental death. Correlation has occurred as the amount received and the amount claimed under the head “medical expenses” pertain to the expenses incurred for treatment of the very same

injuries sustained in the very same accident in which he lost his life, and hence the tribunal was justified in effecting a deduction of the amount while granting compensation towards medical expenses. In a series of subsequent judgments, this Court has consistently followed the same principle, reaffirming that the amount reimbursed under mediclaim policy is liable to be deducted from the medical expenses awardable.

13. The crucial question that now arises is whether the amount received under a mediclaim policy and the amount received under a personal accident coverage can be placed on the same footing in all respects. Undisputedly, the answer to the said question is in the negative. A mediclaim policy is a reimbursement-based insurance scheme that indemnifies the insured for expenses incurred towards medical treatment. If the claimants have already been reimbursed under such a policy for the treatment expenses relating to the injuries sustained in a specific accident, they cannot be permitted to seek compensation for the same medical expenses once again in a claim

petition filed under the MV Act. However, the nature and purpose of personal accident coverage are fundamentally different.

14. The compulsory personal accident cover was introduced by the Insurance Regulatory and Development Authority of India (IRDAI) as a statutory and social security measure, made mandatory for every vehicle owner at the time of obtaining or renewing an insurance policy. Virtually, the owner of the vehicle had no option but to take a policy that includes personal accident cover, and for which he had to pay a separate premium also. More significantly, unlike mediclaim, which indemnifies specific costs, the compulsory personal accident cover provides a fixed sum upon the death or sustainment of specified injuries due to an accident. Therefore, any attempt to treat the amount received under compulsory personal accident coverage on par with mediclaim reimbursement for the purpose of effecting a deduction from the compensation awarded would be unjustifiable.

15. At this juncture, it is worthwhile to refer to the decision of the Hon'ble Supreme Court in **Helen C. Rebello and others v. Maharashtra State Road Transport Corporation and another** [1999 (1) Supreme Court Cases 90] where the Apex Court considered the question as to whether the life insurance money received on account of a demise of the insured was liable to be deducted from the amount of compensation that the claimants-family members were entitled to receive under the Act of 1939. After referring to various decisions including the decision in **Bradburn v. Great Western Rail Company** [(1874-80) All England Reports 195], it was held that the amount of insurance is payable only on the contingency referred to in the contract and if the contingency of injury or death does not happen, the insured is the gainer as it receives more under premium than to pay on maturity of the policy. In case the contingency occurs, the claimant is the gainer as he receives the amount even before paying the full premium, and the gain is to the proportion of the balance unpaid premium, whether on account of injury or death. In

paragraph 35 of the said decision, it has been observed as under;

> "35……..Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract to receive the amount. Similarly, any cash, bank balance, shares, fixed deposits, etc. though, are all a pecuniary advantage receivable by the heirs on account of one's death, but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount, which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

16. Now the remaining question that requires consideration is whether in the light of the decision in **United India Insurance Company Ltd. and others v. Patricia Jean Mahajan and others [**(2002 (6) Supreme Court cases 281], the amount received by the claimants on account of the personal accident coverage from the insurer of the deceased's vehicle is liable to be deducted from the compensation awarded in a petition filed under Section 166 of MV Act. In the said case, one of the core issues that arose for consideration was whether the amount received by the claimants on account of the life insurance policy of the deceased and the allowances received by his wife and children under the social security system were deductible from the amount of compensation payable for the death of the deceased. While dealing with that issue, the Hon'ble Supreme Court in paragraph 33 of the said judgment observed as follows;

> "We are in full agreement with the observations made in the case of Helen Rebello that principle of balancing between losses and gains by reason of

death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary to for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and Motor Vehicles Act. According to the decisions referred to in Helen Rebello's case, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury of death so far as to be deductible from the amount of compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere. In the absence, the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of the insurance policy of the deceased cannot be deducted from the amount of compensation, though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the insurance company has vehemently urged, for example some allowance paid to the children and Mrs. Patricia Maharaj under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund, out of which payment on account of social security systems is made, one of the constituents of the fund is tax, which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive

> irrespective of accidental death of Dr.Mahajan. If the preposition "receipts from whatever source" is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of the accidental death. Such gains, may be on account of savings or other investments etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if he had never taken an insurance policy or had not made investments for future returns.
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> 37. We therefore do not allow any deduction as pressed by the Insurance Company on account of receipt of insurance policy and social security benefits received by the claimants."

17. What the Hon'ble Supreme Court clarified in **Patricia's case** (cited supra) is that the family pension, provident fund, gratuity etc. if obtained by the claimant dependents pursuant to the death of the victim who was an employee, could not be deducted from the compensation to which they are entitled in a claim made under the provisions of MV Act. Obviously, such benefits payable by way of social security benefits would be payable to the widow or to the statutory eligible person even in a case of the natural death of the employee concerned, subject to the

service conditions. However, a close and careful reading of the decision in **Patricia's case** reveals that if there is a correlation between the amount received and the accidental death, or if they are in the same sphere, the amount received from other sources could be deducted from the amount of compensation.

18. I am not oblivious that there is a difference between life insurance policies and personal accident coverage policies. A life insurance policy entitles the insured or their nominee to receive the assured sum either on the maturity of the policy or on the death of the insured, irrespective of the cause of death. However, the amount under the personal accident coverage becomes payable only upon the occurrence of certain defined events, such as accidental death or sustainment of specified injuries resulting from a motor accident. Life insurance benefits are payable irrespective of the cause of death, whether natural or accidental. Moreover, if the insured survives the term of the policy, he is entitled to get the maturity amount. Anyhow, unlike in the case of a mediclaim policy, personal

accident cover provides a predetermined lump sum upon the occurrence of death, regardless of actual expenses. Instead, the payout under personal accident coverage functions almost akin to life insurance policies.

19. It is equally important to appreciate that compulsory personal accident coverage was introduced pursuant to the direction of the Insurance Regulatory and Development Authority of India (IRDAI) and is intended to function as a social security measure. Unlike mediclaim insurance, which is optional and voluntary, it is mandatory for every owner of a motor vehicle to secure an insurance policy that includes personal accident coverage. It is not open to the vehicle owner to waive or opt out of this component. For this purpose, the insurer is required to collect a separate premium, which signifies that the coverage is contractual in nature. It is apparent that there is a public welfare objective behind it and therefore, amounts received by the dependents under a separate contract and under the social security system have no much correlation with the accidental death.

20. Consequently, in line with the principles laid down by the Hon'ble Supreme Court in Patricia's case, the amount received under the statutorily mandated social security scheme, including personal accident coverage, cannot be deducted from the compensation awardable under Section 168 of the MV Act. The amount payable under personal accident coverage is not meant to enure to the benefit of the tortfeasor. Therefore, in the case at hand, the tribunal's direction to deduct Rs.2,00,000/- received under personal accident cover from the compensation awarded to the claimants is legally unsustainable and warrants interference.

In the light of the aforesaid observations and findings, the appeal is allowed by enhancing the compensation by a further amount of Rs.2,00,000/- (Rupees Two Lakhs only) with interest at the rate of 7.5% per annum on the enhanced compensation from the date of the claim petition till the date of deposit. The respondent insurance company is ordered to deposit the enhanced compensation with interest and proportionate costs before the tribunal within a

period of three months from the date of this judgment. The said additional compensation shall be apportioned equally among the appellants/claimants.

Sd/-
JOBIN SEBASTIAN
JUDGE

ncd/ANS