

Laly Prince vs Reliance General Insurance Co.Ltd.

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Court : Kerala

Decided On : Feb-18-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : CO/64/2017

Appellant : Laly Prince

Respondent : Reliance General Insurance Co.Ltd.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
TUESDAY, THE 18TH DAY OF FEBRUARY 2025 / 29TH MAGHA, 1946
MACA NO. 3921 OF 2016 AGAINST THE AWARD DATED 02.05.2016
IN OPMV NO.618 OF 2014 OF II ADDITIONAL MACT, THODUPUZHA
APPELLANT/3RD RESPONDENT: RELIANCE GENERAL INSURANCE
CO. LTD REP. BY ITS LEGAL CLAIMS MANAGER, RELIANCE
GENERAL INSURANCE CO. LTD. ERNAKULAM BY ADV TAPAS
VARMA A RESPONDENTS/CLAIMANTS & RESPONDENTS 1& 2:

1 LALY PRINCE W/O.LATE PRINCE JOSEPH, PUTHOOR HOUSE,
IDUKKI DISTRICT 685 551. 2 PRITTY JOSEPH (MINOR) D/O.LATE

PRINCE JOSEPH, PUTHOOR HOUSE, 3 ALAN JOSEPH (MINOR) S/O.LATE PRINCE JOSEPH, PUTHOOR HOUSE, 4 MICHAEL JOSEPH (MINOR) S/O.LATE PRINCE JOSEPH, PUTHOOR HOUSE, 5 MARYKUTTY JOSEPH W/O.JOSEPH P.M., PUTHOOR HOUSE, 6 MS.YATHRA HOLIDAYS PVT. LTD 25 NEXT TO CITY HOSPITAL MARUTHINGAR, MAIN ROAD, HOSUR, MAIN ROAD MADIWALA, BANGALORE 560068. 7 ESSA.N. IPE, S/O.N.T.ERAVE, NADUMPARAMBIL HOUSE, PALLOM, KOTTAYAM DISTRICT 686 007. BY ADV SRI.P.C.HARIDAS THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 18.02.2025, ALONG WITH CO.64/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
TUESDAY, THE 18TH DAY OF FEBRUARY 2025 / 29TH MAGHA, 1946
CO NO. 64 OF 2017 IN MACA NO.3921 OF 2016 OF HIGH COURT OF KERALA CROSS OBJECTORS/RESPONDENTS 1-5/PETITIONER:

1 LALY PRINCE W/O.LATE PRINCE JOSEPH, AGED 40 YEARS, PUTHOOR HOUSE, ANAKKARA VILLAGE, PUTTADY PO, IDUKKI DISTRICT. 2 PRITTY JOSEPH (MINOR) D/O.LATE PRINCE JOSEPH, AGED 13 YEARS, PUTHOOR HOUSE, ANAKKARA VILLAGE, PUTTADY PO, IDUKKI DISTRICT 685 551 REPRESENTED BY HER MOTHER AND NEXT FRIEND, LALY PRINCE, W/O.LATE PRINCE JOSEPH, AGED 40 YEARS, PUTHOOR HOUSE, IDUKKI DISTRICT 3 ALAN JOSEPH (MINOR) S/O.LATE PRINCE JOSEPH, AGED 11 YEARS, PUTHOOR HOUSE, ANAKKARA VILLAGE, PUTTADY PO, IDUKKI DISTRICT REPRESENTED BY HIS MOTHER AND NEXT FRIEND, LALY PRINCE, W/O.LATE PRINCE JOSEPH, AGED 40 YEARS, PUTHOOR HOUSE,

4 MICHAEL JOSEPH (MINOR) S/O.LATE PRINCE JOSEPH, AGED 8 YEARS, PUTHOOR HOUSE, ANAKKARA VILLAGE, PUTTADY PO,

IDUKKI DISTRICT REPRESENTED BY HIS MOTHER AND NEXT FRIEND, LALY PRINCE, W/O.LATE PRINCE JOSEPH, AGED 40 YAERS, PUTHOOR HOUSE, 5 MARYKUTTY JOSEPH W/O.JOSEPH P.M. AGED 70 YEARS, PUTHOOR HOUSE, ANAKKARA VILLAGE, PUTTADY PO, IDUKKI DISTRICT BY ADV P.C.HARIDAS RESPONDENTS/APPELLANT-RESPONDENTS 6 & 7/RESPONDENT: 1 RELIANCE GENERAL INSURANCE CO.LTD. REPRESENTED BY ITS LEGAL CLAIMS MANAGER, RELIANCE GENERAL INSURANCE CO. LTD, ERNAKULAM-682018 2 M/S YATHRA HOLIDAYS PVT. LTD #25 NEXT TO CITY HOSPITAL, MARUTHINNAGAR, MAIN ROAD HOSUR, MAIN ROAD MADIWALA, BANGALORE-560068 3 ESSA N. IPE S/O N. T. ERAVE, NADUMPARAMBIL HOUSE, PALLOM, KOTTAYAM -686007 BY ADV TAPAS VARMA A. THIS CROSS OBJECTION/CROSS APPEAL HAVING BEEN FIANLLY HEARD ON 18.02.2025, ALONG WITH MACA.3921/2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of February, 2025 Respondent No.3 in O.P.(M.V.). No.618/2014 on the file of the Additional Motor Accident Claims Tribunal-II, Thodupuzha is the appellant herein. The petitioners in the O.P are the cross objectors. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The O.P. was filed under under Section 166 of the Motor Vehicles

Act, 1988, by the wife, children and mother of the deceased by name Prince Joseph, who died in a motor vehicle accident that occurred on 11.11.2012. According to them, the deceased was engaged by the 1 st respondent as paid driver of the bus bearing registration No.KA-01AB-

5377. On 11.11.2012, while the bus was returning from Bangalore to

Kottarakkara, at about 11 a.m., the bus hit behind a lorry bearing registration No.TN 52-9946 and as a result of which he sustained serious injuries and he succumbed to the injuries on the same day.

3. The 2nd respondent was the driver of the bus at the time of

the accident. The 1st respondent is the owner and 3rd respondent is the insurer of the offending vehicle. According to the petitioners, the accident occurred due to the negligence of the 2nd respondent. The quantum of compensation claimed in the O.P. was Rs.35,54,000/- limited to Rs.35,00,000/-

4. The insurance company filed a written statement, admitting the

accident as well as the policy but disputing the negligence on the part of the 2nd respondent. It was also contended that the accident occurred due to the negligence of the driver of the lorry.

5. The evidence in the case consists of the documentary evidence Exts.A1 to A12 and B1.

6. After evaluating the evidence on record, the Tribunal found negligence on the part of the 2nd respondent, awarded a total compensation of Rs.20,63,000/- and directed the 3rd respondent to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the Respondent No.3 preferred this appeal.

8. Now the points that arise for consideration are the following: 1) Whether Exhibit B1 policy covers the deceased also? 2) Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri. A. Tapas Varma, the learned Standing Counsel appearing for the 3rd respondent/appellant, and Sri. P.C. Haridas, the learned Counsel for the petitioners/Cross objectors.

10. The Points: In this case the accident as well as valid policy of the

offending vehicle are admitted. The main contention raised by the learned standing counsel for the appellant is that at the time of the accident the deceased was not the driver and hence Exhibit B1 policy does not cover him. However, the Tribunal found that as per Exhibit B1, an additional sum of Rs.25/- was collected in addition to the legal liability under IMT 40 and as

such the deceased being a spare driver, is covered under the policy. The learned counsel for the petitioners also relied upon the decision of a Single Bench of this Court in Hariharan VV and Ors. v. Pailoth and Others (MACA No.352/2018) decided on 7.11.2024, in which in a similar instance, the learned Single Judge held that the spare driver is covered by the insurance policy. Therefore, I do not find any ground to interfere with the finding of the

Tribunal that Exhibit B1 policy covers the deceased also.

11. The learned counsel for the petitioner would argue that the

deceased was a driver by profession, earning Rs. 20,000/- per month, but the Tribunal fixed his monthly income at Rs.9,000/-.The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

12. It is true that the petitioners could not prove the income of the

deceased, as claimed in the OP. However from Ext. A11 and A12, it is proved that the deceased was a driver by profession. As per the dictum laid down by the Honble Supreme Court in the decision in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236], the notional income of a coolie, during the year 2012 will come to Rs.8,500/-. Therefore, considering the fact that the deceased was a driver by profession, his notional income is fixed at Rs.10,000/-, for the purpose of computing the loss of dependency.

13. On the date of accident, the deceased was aged 37 years.

Therefore, 40% of the monthly income is liable to be added towards future prospects, as held in the decision in National Insurance Co.Ltd v Pranay Sethi [(2017) 16 SCC 680] and the multiplier to be applied is 15, as held in Sarla Verma

v. Delhi Transport Corporation, (2009) 6 SCC 121. Since the deceased was married who left behind 5 dependents, towards personal and living expense, 1/4 of the income is liable to be deducted, as held in Sarla Verma (supra). In the above circumstances, the loss of dependency will come to Rs.18,90,000/-

14. The Tribunal has awarded Rs.5,000/-towards loss of estate,

Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards love and affection. In the light of the decision in Pranay Sethi (supra), the appellants are entitled to get a consolidated sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, and the dependents (parents, children and spouse) are entitled to get a sum of Rs.40,000/- each towards loss of consortium, with an increase of 10% in every three years. Therefore, towards loss of estate and funeral expense they are entitled to get a sum of Rs.18,150/- each. Towards loss of consortium, petitioners together are entitled to get a sum of Rs.2,42,000/- (48,400 x 5).

15. Since compensation for loss of consortium was given, further

compensation for love and affection cannot be granted, in view of the decision in New India Assurance Company Ltd. v. Somwati and Others, (2020)9 SCC 644. Therefore, the compensation awarded towards love and affection is to be deducted.

16. Towards the head pain and sufferings, the Tribunal has awarded

Rs.5000/- which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case on the date of the accident. In the above circumstances, I hold that the compensation awarded towards pain and suffering is on the lower side, and hence, it is enhanced to Rs.25,000/-

17. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

18. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.21,98,800/-, as modified and recalculated above and given in the table below,

for easy reference: Sl.

No.	Head of Claim	Amount awarded by	Amount
3	Love and affection	1,00,000/- Nil	4
4	Loss of estate	5,000/- 18,150/-	5
5	Funeral expenses	25,000/- 18,150/-	6
6	Loss of dependency	18,22,500/- 18,90,000/-	7
7	Loss of consortium	1,00,000/- 2,42,000/-(48400x5)	8
8	Pain and suffering	5,000/- 25,000/-	
Total		20,63,000/- 21,98,800/-	Enhanced Rs.1,15,800/-

19. In the result, this Appeal and cross-objection are disposed of

directing the 3rd respondent to deposit a total sum of Rs.21,98,800/- (Rupees twenty one lakh ninety eight thousand eight hundred only), less the amount already deposited, if any, along with interest at the rate ordered by the Tribunal from the date of the petition till realisation/deposit, within a period of two months from today. (Enhanced compensation will carry interest @8%).

19. O Sd/- C. PRATHEEP KUMAR, JUDGE sou.

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