

Joseph vs Mariyamma

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Court : Kerala

Decided On : Feb-19-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/1031/2015

Appellant : Joseph

Respondent : Mariyamma

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
WEDNESDAY, THE 19TH DAY OF FEBRUARY 2025 / 30TH MAGHA, 1946
MACA NO. 1031 OF 2015 AGAINST THE AWARD DATED 31.08.2014 IN OPMV
NO.1806 OF 2008 OF MOTOR ACCIDENT CLAIMS TRIBUNAL
,PERUMBAVOOR APPELLANT: JOSEPH S/O. DEVASSY,
KAITHARATHUCHIRA HOUSE, VADAKKUMBHAGAM, MANJAPRA
PO,ERNAKULAM DISTRICT, PIN-682581 BY ADV SRI.V.N.SUNIL KUMAR
RESPONDENTS:

1 MARIYAMMA AGED 52 YEARS W/O. ALIYAS,KOORAN HOUSE,
ANGADIKADAVU, ANGAMALI PO(MOTHEER OF DECEASED)PIN-

683572 2 BAIJU SO. ALIYAS AGED 34 YEARS KOORAN OUSE, ANADIKADAVUT ANGAMALI PO, (BROTHER OF DECEASED)PIN-6835723 3 REENA WO. SAJU AGED 31 YEARS PALAKKUDY HOUSE, LALLEKKADU KURUPPUMPADY, PERUMBAVOOR PO, (SISTER OF DECEASED), PIN-683542 4 SAJI SO ALIYAS AGED 29 YEARS KOORAN OUSE, ANADIKADAVUT ANGAMALI PO, (BROTHER OF DECEASED)PIN-6835723 5 JOSE K.D. S/O. DEVASSY, 5/416(2/419) KAITHARATH HIOUSE,M

&1509 OF 2015 2 NADUMURUM, MANJAPRA PO, ERNAKULAM DISTRICT PIN-6 THE MANAGER THE ORIENTAL INSURANCE COMPANY LTD DIVISIONAL OFFICE, POALAKKATT BAUILDING, MARKET JUNCTION, TRIPUNITHURA PIN-682301 BY ADV SRI.A.R.GEORGE-SC OTHER PRESENT: SMT. ANUPAMA JOHNY -APP. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19.02.2025, ALONG WITH MACA.1509/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: &1509 OF 2015 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR WEDNESDAY, THE 19TH DAY OF FEBRUARY 2025 / 30TH MAGHA, 1946 MACA NO. 1509 OF 2015 AGAINST THE AWARD DATED IN OPMV NO.1806 OF 2008 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,PERUMBAVOOR APPELLANTS: 1 MARIYAMMA AGED 56 YEARS W/O. ALIAS, KOORAN HOUSE, ANGADIKKADAVU, ANGAMALY P.O., (MOTHER OF THE DECEASED). 2 BAIJU AGED 38 YEARS S/O. ALIAS, KOORAN HOUSE, ANGADIKADAVU, ANGAMALY P.O. (BROTHER OF THE DECEASED). 3 REENA AGED 35 YEARS W/O. SAJU, PALAKKUDY HOUSE, PALLEKKADU, KURUPPAMPADY, PERUMBAVOOR. (SISTER OF THE DECEASED). 4 SAJI AGED 34 YEARS S/O. ALIAS, KOORAN HOUSE, ANGADIKKADAVU, ANGAMALY P.O., (BROTHER OF THE DECEASED).

BY ADVS. SRI.REJI GEORGE &1509 OF 2015 4 SMT.ANUPAMA JOHNY

RESPONDENTS: 1 JOSEPH S/O. DEVASSY, KAITHARATHUCHIRA HOUSE, VADAKUMBHAGAM, MANJAPRA P.O., ERNAKULAM-682 102. 2 JOSE K.D. S/O. DEVASSY, 54/16(214/19), KAITHARATH HOUSE, NADUMURI, MANJAPRA P.O., ERNAKULAM-682 102. 3 THE MANAGER THE ORIENTAL INSURANCE CO. LTD., DIVISIONAL OFFICE, PALAKKATT BUILDING, MARKET JUNCTION, TRIPUNITHURA-682 531.

BY ADVS SRI. A.R GEROGGE -SC SRI.V.N.SUNIL KUMAR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19.02.2025, ALONG WITH MACA.1031/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: &1509 OF 2015 5

JUDGMENT

Dated this the 19th day of February, 2025 The petitioners in O.P.(M.V.) No. 1806/2008 on the file of the Motor Accident Claims Tribunal, Perumbavoor, are the appellants in M.A.C.A.No. 1509/2015. The 1st respondent in the O.P is the appellant in M.A.C.A.No. 1031/2015. (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 Mother and siblings of the deceased Eldho, who died in a motor vehicle accident that occurred on 19.10.2008. According to them, on 19.10.2008, at about 9.15 p.m., while the deceased was riding a motorcycle, a Tate Ace bearing Reg.No.KL-41/A-5262 driven by the 1 st respondent in a rash and negligent manner, hit him down and as a result of which he sustained serious injuries and later on he succumbed to the injuries, on the same day, while under

treatment.

3. The 1st respondent is the driver, the 2nd 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 driver of the &1509 OF 2015 6 offending vehicle. The quantum of compensation claimed in the O.P. was Rs.32,31,100/-(limited to Rs.30,00,000/-)

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the oral testimony of PW1 and documentary evidence Exts.A1 to A15 and B1 to B3.

6. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.2,95,500/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners and the 1st respondent preferred these appeals.

8. Now the point that arises for consideration is the following: Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri. V.N Sunil Kumar , the learned Counsel appearing for the petitioners/appellants, Smt. Anupama Johny, the learned Counsel appearing for the respondents 1 & 2 and Sri.A.R George, the learned &1509 OF 2015 7 rd Standing Counsel for the 3 respondent.

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

the offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioners is regarding the income of the deceased as fixed by the Tribunal. According to him, the deceased was working as Welder in UAE, getting a monthly income of more than

Rs.28,000/-, but the Tribunal fixed his monthly income at Rs.3500/-/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. In order to prove the income of the petitioners, he has relied

upon Ext.A13 certificate issued by the K.S.E.B and Ext.A8 employment contract issued by the Lamprell Dubai LLC . Ext.A12 certificate issued by the Ministry of Labour and Social affairs UAE and Ext.A10 passport. From Ext.A10 passport it is revealed that the deceased returned from UAE to India only on 18.10.2008, the day before the accident. In Exts. A9 it is stated that the basic salary of the deceased was 2288 UAE Dhs along with other allowances. However, Exts.A8 and A9 documents were not seen attested by the Embassy officials and as such they cannot be relied upon. From Ext.A13 certificate issued by the K.S.E.B it is revealed that

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the deceased was engaged as a Fitter-cum-X-ray Welder, under M/s.West Coast Concrete products, the civil contractor of the Malankara Small Hydro Electric Project of K.S.E.B during the period of 2004 and 2005. In Ext.A13 it is further stated that, during his service he has attended various works relating to fabrication and erection of steel penstock pipes, draft tube cones etc. It is true that the petitioners could not prove the income of the deceased, as claimed in the OP. From the above documents it can be seen that, the deceased was a Welder by profession as claimed by the petitioners. 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 2008 will come to Rs.6500/-. Therefore, considering the fact that the deceased was a Welder by profession and he returned from abroad only on the day prior

to the accident, I am inclined to fix this notional income is fixed at Rs. 8000/-, for the purpose of computing the loss of dependency.

12. On the date of accident, the deceased was aged 26 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 &1509 OF 2015 9

Sethi [(2017) 16 SCC 680] and the multiplier to be applied is 17, as held in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121. Since the deceased was a bachelor who left behind only one dependent, towards personal and living expense, 1/2 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.11,42,400/-

13. The learned counsel for the 1st respondent would argue that,

during the relevant period the 1st respondent had valid licence and as such the tribunal was not justified in permitting the 3rd respondent to recover the compensation from the 1st respondent.

14. The learned counsel for the 3rd respondent would argue that, on

an earlier occasion the 1st respondent had produced a fake driving licence. However, Ext.B2 driving licence issued by the RTO Angamaly shows that, the 1st respondent had valid driving licence with effect from 19.10.2007. Since the date of the accident was on 19.10.2008 it is to be held that on the date of the accident he had valid driving licence. Therefore the tribunal was not justified in permitting the 3rd respondent to pay and recover the compensation from the 1st respondent. Therefore the 1st respondent is liable to be exonerated

&1509 OF 2015 10 rd and 3 respondent is to be directed to pay the compensation to the petitioners.

15. The Tribunal has awarded Rs.2,500/- towards loss of estate,

Rs.25,000/- towards funeral expenses, Rs.30,000/- towards love and affection and towards loss of consortium the tribunal has not awarded any amount. 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.48,400/- (48,400 x1).

16. 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.

17. No change is required, in the amounts awarded on other heads, &1509 OF 2015 11 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.12,54,100/-, as modified and recalculated above and given in the table below, for easy reference:

Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Appeal (in Rs.)
1	Transport to hospital	Rs.1500/-	Rs.1500/-
2	Funeral expenses	Rs.25,000/-	Rs.18150/-
3	Loss of dependency	Rs.2,31,000/-	Rs.11,42,400/-
4	Pain and sufferings	Rs.5,000/-	Rs.25,000/-
5	Damage to clothes etc.	Rs.500/-	Rs.500/-
6	Love and affection	Rs.30,000/-	NIL
7			

Loss of estate Rs.2,500/- Rs.18150/- 8 Loss of consortium NIL
Rs.48,400/- Total Rs.2,95,500/- Rs.12,54,100/- Enhanced Rs.9,58,600/-

19. In the result, these Appeals are disposed of directing the 3rd

respondent to deposit a total sum of Rs.12,54,100/-, (Rupees Twelve lakhs fifty four thousand one hundred Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till realisation/deposit, with proportionate costs, within a period of two months &1509 OF 2015 12 from today.

20. On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioners, in the ratio fixed by the Tribunal, excluding court fee payable, if any, without delay, as per rules. Sd/- C. PRATHEEP KUMAR, JUDGE
vnk/-

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