

Jose vs K.K. Vijayan

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Court : Kerala

Decided On : Mar-04-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/1067/2014

Appellant : JOSE

Respondent : K.K. Vijayan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
TUESDAY, THE 4TH DAY OF MARCH 2025 / 13TH PHALGUNA, 1946 MACA
NO. 1067 OF 2014 AGAINST THE AWARD DATED IN OPMV NO.461 OF 2008
OF ADDITIONAL DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL
,THODUPUZHA APPELLANTS/PETITIONERS: 1 JOSE S/O. JOSEPH, AGED
57,ELAYAMBANICKAL HOUSE,8TH MILE KARA, THANKAMANI VILLAGE. 2
MARY W/O. JOSE, AGED 53 YEARS, ,ELAYAMBANICKAL HOUSE,8TH MILE
KARA, THANKAMANI VILLAGE. BY ADVS. SRI.C.M.TOMY SRI.K.J.JOSEMON
SRI.MATHEW SKARIA RESPONDENTS/RESPONDENTS:

1 K.K. VIJAYAN S/O. KUNJUKUTTY, KALLARACKAL HOUSE, NEELOOR KOTTAYAM DISTRICT - 686 651 (DRIVER) 2 REJI W/O. SOBY, PUTHUPARAMBIL HOUSE, KAYOOR P.O., BHARANANGANAM, PALA, KOTTAYAM DISTRICT - 686 651 (R.C OWNER) 3 THE ORIENTAL INSURANCE COMPANY LIMITED REPRESENTED BY ITS DIVISIONAL MANAGER, KOTTAYAM - 686 001 (INSURER) BY ADVS. P.JACOB MATHEW MATHEWS JACOB (SR.)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 04.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners in O.P.(M.V.) No.461/ 2008 on the file of the Motor Accident Claims Tribunal, Thodupuzha, are the appellants herein. (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 140 and 166 of the

Motor Vehicles Act, 1988, by the parents of the deceased by name Bibin, who died in a motor vehicle accident that occurred on 30.07.2008. According to them, on 30.07.2008, at about 3.00 p.m., while the deceased was standing by the side of the Kattappana- Thodupuzha road, a car bearing reg.no.KL 5Q/8613 driven by the 1st respondent in a rash and negligent manner and excessive speed, knocked down the deceased and he sustained grievous injuries and he succumbed to the injuries on the same day.

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 offending vehicle. The quantum of compensation claimed in the O.P. was limited

to Rs.7,00,000/-.

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 documentary evidence Exts.A1 to A7. No evidence was adduced by the respondents.

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.4,91,000/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners preferred this appeal.

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.C.M.Tomy, the learned Counsel appearing for the petitioners/appellants, and Sri.P.Jacob Mathew, the learned Standing Counsel for the 3rd 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 bus conductor, earning Rs. 7875/- per month, but the Tribunal fixed his monthly income at Rs.5000/-.The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. 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/-. Since the petitioners could not prove the job

or income of the deceased, as claimed in the OP, in the light of the dictum laid down by the Honble Supreme Court in Ramachandrappa (supra), his notional income is liable to be fixed as that of a coolie, at Rs.6500/-.

12. On the date of accident, the deceased was aged 21 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 18, as held in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121. Since the deceased was a bachelor who left behind 2 dependents, 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.9,82,800/-.

13. The Tribunal has awarded Rs.10,000/- towards loss of estate,

Rs.20,000/- towards funeral expenses, and Rs.50,000/- 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 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.96800/- (48,400 x 2).

14. 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.

15. Towards the head pain and sufferings, the Tribunal has

awarded Rs.15,000/-, which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case on the same. 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.25000/-.

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

17. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.11,46,900/-, as modified and recalculated above and given in the table below, for easy reference: Sl.

No	Head of Claim	Amount awarded by	Amount
affection 7	Loss of estate 10000 18150	8 Loss of consortium Nil 96800	Total 491000 1146900
Enhanced / reduced Rs. 655900			

18. In the result, this Appeal is allowed in part, and the 3rd

respondent is directed to deposit a total sum of Rs.11,46,900/- (Rupees Eleven Lakhs Forty Six Thousand Nine 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, with proportionate costs, within a period of two months from today. (enhanced compensation will carry interest @8%).

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 Pwv

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