

P.K.Yacob vs Poly

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Court : Kerala

Decided On : Feb-27-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/1409/2014

Appellant : P.K.Yacob

Respondent : POLY

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
THURSDAY, THE 27TH DAY OF FEBRUARY 2025 / 8TH PHALGUNA, 1946
MACA NO. 1409 OF 2014 AGAINST THE AWARD DATED 29.06.2013 IN OPMV
NO.149 OF 2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,PERUMBAVOOR
APPELLANTS:

1 P.K.YACOB S/O.KURIAKOSE, PALATHIMGAL HOUSE, EDATHALA
KARA, 2 ANNAMMA YACOB W/O.YACOB, PALATHIMGAL HOUSE,
EDATHALA KARA, 3 CHINNAMMA KURIACHAN W/O.LATE
KURIACHAN, PALATHIMGAL HOUSE, EDATHALA KARA, 4 JINCY
KURIACHAN D/O.LATE KURIACHAN, PALATHIMGAL HOUSE,

EDATHALA KARA, 5 JOMY P.K D/O.LATE KURIACHAN,
PALATHIMGAL HOUSE, EDATHALA KARA,

BY ADVS. SRI.V.RAJENDRAN (PERUMBAVOOR) SRI.GEORGE VARGHESE
KIZHAKKAMBALAM RESPONDENTS: 1 POLY S/O.CHANDY, CHULLI HOUSE,
AIMURY KARA, KOOVAPPADY MACA NO. 1409 OF 2014 2 VILLAGE. 683 544.
2 NEW INDIA INSURANCE COMPANY PERUMBAVOOR. 683 542. BY ADVS.
SRI.LAL K JOSEPH-SC SRI.SURESH SUKUMAR(K/634/1997) SRI.ANZIL
SALIM(K/000447/2018)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 27.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: MACA NO. 1409 OF 2014 3

JUDGMENT

Dated this the 27th day of February, 2025 The petitioners/ in O.P.(M.V.) No. 149/
2007 on the file of the Motor Accident Claims Tribunal, Perumbavoor. are the
appellants. (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 parents of the deceased Kuriachan,
who died in a motor vehicle accident that occurred on 26.11.2006. According to
them, on 26.11.2006, at about 4.30 p.m., while the deceased was riding a
motorcycle, he was hit down by a Maruti car bearing Reg. No. KL- and as a result
of which he sustained serious injuries and later on he succumbed to the injuries
while under treatment.

3. The 1st respondent is the driver cum owner and the 2nd

respondent 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 Rs.10,04,000/-(limited MACA
NO. 1409 OF 2014 4 to 6,00,000/-)

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 were marked. 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. 5,25,000/- 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. When the matter was taken up for arguments, there was no representation for the appellant.

10. Heard Sri.Lal K. Joseph, the learned Standing Counsel for the 2nd respondent.

11. The Point: In this case the accident as well as valid policy of MACA NO. 1409 OF 2014 5

the offending vehicle are admitted. One of the contentions raised in the appeal is regarding the income of the deceased as fixed by the Tribunal. As per the claim petition, the deceased was working as rubber tapping , earning Rs. 5000/- per month, but the Tribunal fixed his monthly income at Rs.3500/-.

12. 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 2006 will come to Rs.5,500/-. Since the notional income of a coolie, in the year 2006 will come to Rs.5,500/-, in order to award

just and reasonable compensation to the legal representatives of the deceased, the notional income of the petitioner is fixed as that of a coolie, at Rs.5,500/-.

13. On the date of accident, the deceased was aged 44 years.

Therefore, 25% 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 14, as held in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121. Since the deceased was married/ a bachelor 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.8,66,250/- MACA NO. 1409 OF 2014 6

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

Rs.3,000/- towards funeral expenses, Rs.35,000/- towards loss of consortium and Rs.30,000/- 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 x5).

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.10,000/- , which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case on the same date after the accident. In the above circumstances, I hold that the compensation awarded towards pain and suffering is on the lower side, and MACA NO. 1409 OF 2014 7 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.11,73,050/- 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	Funeral expenses	Rs.3,000/-	Rs.18150/-
2	Transport to hospital	Rs.3,000/-	Rs.3,000/-
3	Damage to clothing etc.	Rs.500/-	Rs.500/-
4	Loss of estate	Rs.2500/-	Rs.18150/-
	Dependency	Rs.4,41,000/-	Rs.8,66,250/-
5	Pain and suffering	Rs.10,000/-	Rs.25,000/-
6	Loss of consortium	Rs.35,000/-	Rs.2,42,000/-
7	Love and affection	Rs.30,000/-	NIL
	Total	Rs.5,25,000/-	Rs.11,73,050/-

Enhanced Rs.6,48,050/-

19. In the result, this Appeal is allowed in part, and the 2nd

respondent is directed to deposit a total sum of Rs.11,73,050/- (Rupees Eleven lakhs seventy three thousand fifty Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the MACA NO. 1409 OF 2014 8

petition till realisation/deposit, excluding interest for a period of 193 days, the period of delay in filing the appeal, with proportionate costs, within a period of two months from today. 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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