

Valsala vs Seth

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Court : Kerala

Decided On : Mar-26-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/1592/2016

Appellant : Valsala

Respondent : SETH

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
WEDNESDAY, THE 26TH DAY OF MARCH 2025 / 5TH CHAITHRA,
1947 MACA NO. 1592 OF 2016 AGAINST THE AWARD DATED
29.02.2016 IN OPMV NO.287 OF 2012 OF MOTOR ACCIDENTS
CLAIMS TRIBUNAL ,PUNALUR APPELLANTS/PETITIONERS

1 VALSALA W/O. THULASEEDHARAN C., INDUPADICKAL
PADINJATTETHIL VEEDU, PODIYATTU VILA, ARACKAL VILLAGE,
EDAMULAKKAL, KOLLAM DISTRICT. 2 AROMAL (MINOR), S/O.
THULASEEDHARAN C., INDUPADICKAL PADINJATTETHIL VEEDU,
PODIYATTU VILA, ARACKAL VILLAGE, EDAMULAKKAL, KOLLAM

DISTRICT. 3 RAJAMMA (DIED), W/O. CHELLAPPAN, PARAVILA VEEDU, MYLOM P.O., KOTTARAKKARA, KOLLAM DISTRICT.(1ST APPELLANT IS FILING THIS APPEAL FOR HERSELF AND ON BEHALF OF 2ND APPELLANT ALSO WHO IS A MINOR). 4 DASAN C AGED 67 YEARS, S/O. CHELLAPPAN M., PARAVILAVEEDU, MYLOM SOUTH, MYLOM P.O., KOLLAM DISTRICT , PIN - 5 MANI C AGED 53 YEARS, S/O. CHELLAPPAN M., PERUMBRAL ASHA BHAVAN, MALAYALAPUZHA, CHEENKALTHADOM P.O., PATHANAMTHITTA, PIN - 689671 6 SHINU JAISON AGED 46 YEARS, W/O. JAISON C.J., PARAVILAVEEDU,

MYLOM P.O., MYLOM SOUTH, KOLLAM DISTRICT , PIN - (LEGAL REPRESENTATIVES OF THE DECEASED THIRD APPELLANT ARE IMPEADED AS ADDITIONAL APPELLANTS 4 TO 6, AS PER ORDER DATED 25/03/2025 IN UNNUMBERED IA 1/25) BY ADV SRI.ANCHAL C.VIJAYAN RESPONDENTS/RESPONDENTS

1 SETH S/O. MEERA SAHIB, THENGAZHICATHU VEEDU, THRIKKOVILVATTOM, KANNANALLOOR P.O., KOLLAM DISTRICT-691 576. 2 MATHEW C. MATHEW CHOORAKUZHY MALAYIL, MAKKAPUZHA, MANNAMARUTHI P.O., RANNI, PATHANAMTHITTA DISTRICT-689 676. 3 MUHAMMAD YAKKOUB, S/O. MEERA SAHIB, THENGAZHICATHU VEEDU, THRIKKOVILVATTOM, KANNANALLOOR P.O., KOLLAM DISTRICT-691 576. 4 THE DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD., DIVISIONAL OFFICE, HOSPITAL ROAD, KOLLAM-691 001.

BY ADVS. SAJJU.S-R2 RAJI T.BHASKAR-R4 K.SHAJ THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 26.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners in O.P.(M.V.) No.287 of 2012 on the file of the Motor Accident Claims Tribunal, Punalur, 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 166 of the Motor

Vehicles Act, 1988, by the wife, son and mother of Sri.Thulaseedharan who died in a road traffic accident that occurred on 16.07.2011. According to them, on 16.07.2011 at about 12.30 p.m. while the deceased was walking along the Kottarakara-Pattazhi road, he was knocked down by a pick up van bearing Registration No.KL 03 F 3035, driven by the 3rd respondent in a rash and negligent manner and as a result he fell down and sustained serious injuries and he succumbed to the injuries on 25.07.2011.

3. The 1st respondent is the registered owner, 2nd respondent is the

present owner and the 4th 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 Rs.13,00,000/-.

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 documentary evidence, namely Exts.A1 to A15. 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.8,02,500/- 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.Anchal C.Vijayan, the learned Counsel appearing for

the petitioners/appellants, and Smt.Reji T.Bhaskar, the learned Standing Counsel for the 4th respondent and Sri.Mathew C.Mathen, learned counsel appearing 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 them, the deceased was working as a Coolie, earning Rs.8,000/- per month, but the Tribunal fixed his monthly income at Rs.5,000/-.

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 2011 will come to Rs.8,000/-. Therefore, the learned counsel prayed for fixing the notional income of the deceased at Rs.8,000/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable. Since the notional income of a coolie, in the year 2011 will come to Rs.8,000/-, in order to award just and reasonable compensation, in the light of a dictum laid down in the decision of the Honble Supreme Court in Ramachandrappa (supra), the notional income of the deceased is liable to be fixed as that of a coolie, at Rs.8,000/-.

12. On the date of accident, the deceased was aged 42 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 who left behind three dependents, towards personal and living expense, 1/3 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.11,20,000/-.

13. The Tribunal has awarded Rs.15,000/- towards loss of estate, Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium 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 (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.1,45,200/- (48,400 x 3).

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.40,000/-, which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case 10 days after the accident. In the above circumstances, I hold that the compensation awarded towards pain and suffering is reasonable and hence, no change is required.

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.13,54,500/- as modified and recalculated above and given in the table below, for easy reference: Sl.

No.

Head of Claim

Amount awarded by

Amount Awar

expense and bystanders expense 5 Compensation for pain 40000 40000
and sufferings 6 Compensation for loss 100000 145200 of consortium 7
Compensation for loss 50000 nil of love and affection 8 Compensation
for loss 15000 18150 of estate 9 Compensation for loss 560000
11,20,000 of dependency Total Rs.8,02,500/- Rs.13,54,000/- Enhanced
amount Rs.5,51,500/-

18. In the result, this Appeal is allowed in part, and the 4 th

respondent is directed to deposit a total sum of Rs.13,54,500/- (Rupees Thirteen Lakh fifty four thousand five 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 deposit/realisation, with proportionate costs, within a period of two months from today. (enhanced compensation will carry interest @8%).

19. 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
Mrcs/26.3. APPENDIX RESPONDENT ANNEXURES Annexure A TRUE COPY
OF THE DEATH CERTIFICATE OF RAJAMMA J

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