

Neethu vs Vali

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Court : Kerala

Decided On : Mar-03-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/3218/2017

Appellant : Neethu

Respondent : VALI

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR MONDAY, THE 3RD DAY OF MARCH 2025 / 12TH PHALGUNA, 1946 AGAINST THE AWARD DATED 18.03.2017 IN OPMV NO.639 OF 2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA APPELLANTS/PETITIONERS :- 1 NEETHU, CHITTAKKATTU VEEDU, CHANDIROOR P.O., AROOR, CHERTHALA. 2 SWAMINI, CHITTAKKATTU VEEDU, CHANDIROOR P.O., AROOR, CHERTHALA. 3 PADMANABHAN, CHITTAKKATTU VEEDU, CHANDIROOR P.O., AROOR, CHERTHALA. BY ADVS. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL) SRI.A.R.DILEEP SRI.P.J.JOE PAUL SRI.MANU SEBASTIAN RESPONDENTS/RESPONDENTS :-

1 VALI, S/O.NABI, SEETIPALAM,NAGARAMPALAM,
GUNTUR,ANDHRA PRADESH - 522 601. 2 RAJESH NAIDU,
S/O.SATHYANARAYANA, DOOR NO.22.15.5,CHILAKALURIPET,
M.M.STREET, GUNTUR, ANDHRA PRADESH - 522 601. 3 NATIONAL
INSURANCE CO.LTD. REPRESENTED BY ITS BRANCH MANAGER,
ALAPPUZHA - 688 001. BY ADV SEBASTIAN VARGHESE THIS
MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR

ADMISSION ON 03.03.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

JUDGMENT

The petitioners in O.P.(M.V.) No.639/2010 on the file of the Motor Accident Claims Tribunal, Alapuzha, 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 and parents of the deceased by name Viju C.P. @ Biju, who died in a motor vehicle accident that occurred on 23.02.2009. According to them, on 23.02.2009 at about 2.45 am, while the deceased was driving his car through Kollam - Alappuzha National Highway, a lorry driven by the 1 st respondent in a rash and negligent manner hit against the car. As a result of which, he sustained serious injuries and he succumbed to the injuries on the very same day.

3. 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 Rs.11,04,000/- limited to Rs.11,00,000/-.

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 Exts.A1 to A11. 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.10,32,500/- 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.George Varghese Perumpallikuttiyil, the learned Counsel appearing for the petitioners/appellants, and Sri.Sebastian Varghese, 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 Sales Supervisor of Santhigiri Ashram, earning Rs.9,000/- per month, but the Tribunal fixed his monthly income at Rs.4,000/-. They have also produced Ext.A9 salary certificate. However, nobody was examined to prove Ext.A9 and as such, it could not be taken as the proof of income of the deceased. 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 2009 will come to Rs.7,000/-. 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.7,000/-.

12. On the date of accident, the deceased was aged 33 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 16, as held in Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121. Since the deceased was married who left behind 3 dependants, 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.12,54,400/-.

13. The Tribunal has awarded Rs.25,000/- 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.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.10,000/-, 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/-.

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.14,65,400/-, 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.)	Amount Awarded in Appeal (in Rs.)
1	Transport to hospital	4,000	4,000
2	Damage to clothing	500	500
3	Others : Funeral expenses	25,000	18,150
4	Compensation for pain and sufferings	10,000	25,000
5	Compensation for loss of contribution to the welfare of the family	7,68,000	12,54,400
6	Loss of consortium	1,00,000	1,45,200
7	Loss of estate	25,000	18,150
8	Compensation for loss of love and affection	1,00,000	Nil
	Total	10,32,500	14,65,400
	Enhanced	43,290	

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

is directed to deposit a total sum of Rs.14,65,400/- (Rupees Fourteen Lakh Sixty Five Thousand Four 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%).

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 SMA

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