

Liya vs Hrishikesh Vipin (Deleted)*

Liya vs Hrishikesh Vipin (Deleted)*

SooperKanoon Citation : sooperkanoon.com/1282575

Court : Kerala

Decided On : Mar-05-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/3272/2018

Appellant : LIYA

Respondent : Hrishikesh Vipin (Deleted)*

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
WEDNESDAY, THE 5TH DAY OF MARCH 2025 / 14TH PHALGUNA,
1946 MACA NO. 3272 OF 2018 AGAINST THE AWARD DATED
31.08.2017 IN OPMV NO.1393 OF 2014 OF MOTOR ACCIDENT
CLAIMS TRIBUNAL,PERUMBAVOOR APPELLANTS: 1 LIYA AGED 42
YEARS W/O JACOB KURIAN, MOOLAN HOUSE, KOODALAPAD
KARA, KOOVAPADY VILLAGE, ERNAKULAM DISTRICT 2 ROASE
MARIYA JACOB AGED 19 YEARS D/O. JACOB KURIAN, MOOLAN
HOUSE, KOODALAPAD KARA , KOOVAPADY VILLAGE, ERNAKULAM
DISTRICT. 3 JOODSON AGED 12 YEARS S/O. JOCOB KURIAN , REP.
BY MOTHER, LIYA W/O. JACOB KURIAN BY ADV ELSON SIMON

RESPONDENTS: 1 HRISHIKESH VIPIN (DELETED) S/O B.N.VIPINAN, KOZHIPPILLY MAN, ALLAPRA PO, PERUMBAVOOR, 683 542 2 K.R.N. NAMBOODIRI (DELETED) S/O. RUDRAN NAMBOODIRI, KOZHIPPILLY MANA, ALLAPRA P.O, PERUMBAVOOR-683 542. (RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY, AS PER THE ORDER DATED 14/02/2024 IN IA 1/2025 IN MACA MACA NO. 3272 OF 2018 2 3 THE NEW INDIA ASSURANCE CO.LTD BRANCH OFFICE,LEVEL 5, TOWER II JEEVAN BHARATHI BUILDING 124, CONNAUGHT CIRCUS, NEW DELHI-110001 BY ADV SEBASTIAN VARGHESE- SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA NO. 3272 OF 2018 3

JUDGMENT

Dated this the 5th day of March, 2025 The petitioners in O.P.(M.V.) No.1393/ 2014 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 and minor children of the deceased Jacob, who died in a motor vehicle accident that occurred on 23.07.2014. According to them, on 23.07.2014, at about 7.15 a.m, while the deceased was riding a motorcycle through Perumbavoor-Puthencruz road a car bearing Reg.No.KL- 40/E-3537 driven by the 1st respondent in a rash and negligent manner hit on his motorcycle and as a result of which he sustained serious injuries and later on he succumbed to the injuries, on 25.07.2014, 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 offending vehicle. The quantum of compensation claimed in the O.P. was

Rs.52,20,000/-(limited to Rs.50,00,000/-). MACA NO. 3272 OF 2018 4

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 A16. 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.16,12,000/- 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. Elson Simon, 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 MACA NO. 3272 OF 2018 5

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 Supervisor in a company earning Rs.25,000/- per month, but the Tribunal scaled down his monthly income to Rs.13,000/- without assigning valid and cogent reasons. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. The petitioners relied upon an Ext.A8 salary certificate as well

as evidence of PW1 to substantiate the case that the deceased was getting a monthly salary of Rs. 25,000/-. As per Ext.A8, the monthly salary is shown as Rs.25,000/-. At the time of examination PW1 deposed that the total salary is Rs. 24,300/-. From the salary particulars shown in Ext.A8, the tribunal has selected a few items, namely basic pay, dearness allowance, and house rent allowance, which together will come to Rs. 7950/-, and thereafter the notional income was rounded to 10,000/- and thereafter a 30% addition was given towards future prospects. The above procedure adopted by the tribunal is not correct.

In the decision in Meenakshi v. Oriental insurance company Ltd [2024 KHC online 6411], the Honble Apex court held that all the allowances are also to be taken into consideration while fixing the income of the MACA NO. 3272 OF 2018 6 deceased. Therefore, in the instant case, in the light of the evidence of PW1 and Ext.A8, the notional income of the deceased is fixed at Rs.24,300/-.

12. Since the monthly salary of the deceased was taken as

Rs.24,300/- his annual income during the years 2014-2015 will come to Rs.2,91,600/-. During the said year, there was no income tax for the first Rs. 2,00,000/-, and for the remaining income up to Rs. 5,00,000/-, the income tax payable was 10%. Therefore, the income tax payable for the annual income of Rs.2,91,600/- will come to Rs.9,160/-. Therefore, the annual income less the income tax payable will come to Rs. 28,2440/-. In other words, the monthly income after deducting the income tax will come to Rs.23,537/-.

13. On the date of accident, the deceased was aged 47 years.

Therefore, 30% 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 13, 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.31,18,202/-

14. 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.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 x3).

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.12,000/-, which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case three days MACA NO. 3272 OF 2018 8

after 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/-

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.33,96,702/- as modified and recalculated above and given in the table below, for easy reference: Sl.

No.	Head of Claim	Amount awarded by	Am
-----	---------------	-------------------	----

19. In the result, this Appeal is allowed in part, and the 3rd respondent is directed to deposit a total sum of Rs.33,96,702/- (Rupees Thirty MACA NO. 3272 OF 2018
9

three lakhs ninety six thousand seven hundred and two Only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till realisation/deposit, excluding interest for a period of 294 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/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com