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MACA NO.360 OF 2012

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 28<sup>TH</sup> DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946

MACA NO. 360 OF 2012

AGAINST THE ORDER/JUDGMENT DATED 05.05.2010 IN OPMV NO.1336

OF 2008 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOZHIKODE

APPELLANTS/PETITIONERS:

- 1 AMINA (DECEASED)  
AGED 69 YEARS  
W/O.HASSAN, PARAKOTT HOUSE, NALLALLAM.P.O.,  
AREEKODE, KOZHIKODE DISTRICT.
- 2 SAINABA  
PARAKKOT HOUSE, NALLALLAM P.O, AREEKOD, KOZHIKODE
- 3 MARYAMBI  
PARAKKOT HOUSE, NALLALLAM P.O, AREEKOD, KOZHIKODE
- 4 ABDUL LATHEEF  
PARAKKOT HOUSE, NALLALLAM P.O, AREEKOD, KOZHIKODE
- 5 HAJIRA  
PARAKKOT HOUSE, NALLALLAM P.O, AREEKOD, KOZHIKODE
- 6 NOORJAHAN  
PARAKKOT HOUSE, NALLALLAM P.O, AREEKOD, KOZHIKODE
- 7 SUHARABI  
PARAKKOT HOUSE, NALLALLAM P.O, AREEKOD, KOZHIKODE
- 8 LAILA K.P  
H/O LATE ABDUL AZEEZ P, PARAKKOT HOUSE, NALLALLAM



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**P.O, AREEKOD, KOZHIKODE**

**9 ASHIQUE  
S/O ABDUL AZEEZ, KALLAI, P.O, KOZHIKODE**

**0 AYSHA  
D/O ABDUL AZEEZ, KALLAI, P.O, KOZHIKODE &#42;(THE  
LRS OF THE DECEASED APEELLANT ARE IMPLEADED AS  
ADDITIONAL APPELLANTS 2 TO 10 VIDE ORDER DATED  
14/2/2025 IN IA 2/24)**

**BY ADVS.  
K.MUHAMMED SALAHUDHEEN  
ZUBAIR PULIKKOOL**

**RESPONDENTS/RESPONDENTS:**

**1 P.S.PRAMOD  
S/O.SIVARAMAN, PARAMMAL HOUSE, PANNISSERY,  
P.O.KANNAMMOOCHI, THRISSUR DISTRICT.**

**2 K.VIJAYAN  
AGED 39 YEARS  
S/O.KRISHNAN NAIR, KADAVALLUR VIA, THRISSUR.**

**3 THE NEW INDIA ASSURANCE COMPANY LTD.  
KUNNAMANGALAM.**

**BY ADVS.  
LAL K JOSEPH  
SURESH SUKUMAR(K/634/1997)  
ANZIL SALIM(K/000447/2018)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 28.02.2025, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**



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### **JUDGMENT**

The petitioners in O.P.(M.V.) No.1336/2008 on the file of the Motor Accident Claims Tribunal, Kozhikode, 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 mother and siblings of the deceased by name Muhammed, who died in a motor vehicle accident that occurred on 12.09.2007. According to them, on 12.09.2007, at about 10.30 p.m., while the deceased was walking along the side of Areekkad road, a bus bearing reg. number KL-8-AC-3634 driven by 2<sup>nd</sup> respondent in a rash and negligent manner, hit him down and as a result of which he sustained serious injuries and later on he succumbed to the injuries, while under treatment.

3. The 1<sup>st</sup> respondent is the owner , the 2<sup>nd</sup> respondent is the driver and 3<sup>rd</sup> 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.6,63,000/-.



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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 A5. 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.1,06,500/- 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.Mohammed Salahudhin, the learned Counsel appearing for the petitioners/appellants, and Sri.Lal K. Joseph, the learned Standing Counsel for the 3<sup>rd</sup> respondent.



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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 coolie, earning Rs.4500/- per month, but the Tribunal fixed his monthly income at Rs.2000/-.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 Hon'ble Supreme Court in the decision in **Ramachandrappa v. Manger, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236]**, the notional income of a coolie, during the year 2007 will come to Rs.6000/-.Therefore, the learned counsel prayed for fixing the notional income of the petitioner at Rs.6000/-. 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 2007 will come to Rs.6000/-, in order to award just and reasonable compensation, in the light of a dictum laid down in the decision of the Hon'ble Supreme Court in **Ramachandrappa (supra)**, the notional income of the petitioner is liable to be fixed as that of a coolie, at Rs.6000/-.



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12. On the date of accident, the deceased was aged 48 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 13, as held in **Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121**. Since the deceased was a bachelor who left behind 1 dependant, 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.5,85,000/-.

13. The Tribunal has awarded Rs.2500/- towards loss of estate, Rs.3000/- towards funeral expenses and Rs.5000/- 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. 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.48,400/-.

14. Since compensation for loss of consortium was given, further compensation for love and affection cannot be granted, in view of the



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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.10000/-, which according to the learned counsel for the petitioners, is on the lower side. The deceased died in this case 1 day after the accident. 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.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.6,96,700/-, 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	1500	1500
2	Damage to clothing	500	500



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3	Funeral expenses	3000	18150
4	Pain and sufferings	10000	25000
5	Loss of love and affection	5000	-----
6	Loss of estate	2500	18150
7	Loss of dependency	84000	585000
8	Loss of consortium	Nil	48400
	<b>Total</b>	<b>106500</b>	<b>696700</b>
	Enhanced / reduced Rs.	<b>590200</b>	

18. In the result, this Appeal is allowed in part, and the 3<sup>rd</sup> respondent is directed to deposit a total sum of Rs.6,96,700/- (Rupees Six Lakhs Ninety Six Thousand Seven Hundred Only), less the amount already deposited, if any, along with interest @8% per annum, from the date of the petition till realisation/deposit, with proportionate costs, within a period of two months from today.

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**

Pvv