



2025:KER:18188

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

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

MACA NO. 463 OF 2015

AGAINST THE ORDER/JUDGMENT DATED 02.06.2014 IN OPMV
NO.159 OF 2012 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT -
VII, ERNAKULAM / III ADDITIONAL MACT, ERNAKULAM.

APPELLANTS:

- 1 V.L.DAVY @DAVIS,
AGED 51 YEARS,
DOOR NO. 13/410A, VILLEDOM VEETTIL,
PANAYAPPILLY, COCHIN - 02.
- 2 ROSILY DAVY,
W/O.V.L.DAVY @ DAVIS, DOOR NO. 13/410A,
VILLEDOM VEETTIL, PANAYAPPILLY, COCHIN - 02.
- 3 DINSY,
D/O.V.L.DAVY & DAVIS, DOOR NO. 13/410A,
VILLEDOM VEETTIL, PANAYAPPILLY, COCHIN - 02.

BY ADVS.
SRI.P.S.SREEDHARAN PILLAI
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.JOSEPH GEORGEMULLAKKARIYIL
SRI.T.K.SANDEEP

RESPONDENTS:

- 1 DINU ANTONY,
S/O.DOMINIC, HOUSE NO. 19/1394 (19/2131),
PUNATHIL HOUSE, NELSON MANDELA ROAD, PALLURUTHY,
COCHIN - 682 006.



**2 NATIONAL INSURANCE COMPANY LTD,
 REGIONAL OFFICE, OMANA BUILDING, JEWS STREET,
 ERNAKULAM, COCHIN - 682 035.**

BY ADV SMT.SARAH SALVY

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 28.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



J U D G M E N T

(Dated this the 28th day of February, 2025)

The petitioners in O.P.(M.V.) No.159/2012 on the file of the III Additional Motor Accident Claims Tribunal, Ernakulam is the appellant 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 parents and sibling of the deceased by name John David, who died in a motor vehicle accident that occurred on 28.09.2011. According to them, on 28.09.2011, at about 8.45 p.m., while the deceased was riding a motorcycle through the Kundannoor-Thevara Bridge road, another motorcycle bearing Registration No.KL-43/C-5696 ridden by the 1st respondent in a rash and negligent manner hit on the motorcycle of the deceased. As a result of which he fell down and sustained serious injuries and later on he succumbed to the injuries, on the same day.

3. The 1st respondent is the rider cum owner and 2nd respondent is the insurer of the offending vehicle. According to the petitioners, the accident occurred due to the negligence of the rider of the offending vehicle. The quantum of compensation claimed in the O.P. was Rs.27,40,000/- limited to Rs.15,00,000/-.

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 oral testimony of PW1 and documentary evidence Exts.A1 to A9. 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.14,53,000/- 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.P.S.Sreedharan, the learned Counsel appearing for the petitioners/appellants, and Smt.Sarah Salvy, the learned Standing Counsel for the 2nd 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 project engineer in UV Tech Systems, earning Rs.15,000/- per



month, but the Tribunal fixed his monthly income at Rs.8,000/-.The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. According to the learned counsel for the petitioners , in the decision in **Kandasamy v. Linda Briyal (2023 KHC 5361)**, the Hon'ble Supreme Court has fixed the notional income of a B-tech graduate involved in an accident of the year 2008 at Rs.25,000/-. In the decision in **Basanti Devi and Others v. Divisional Manager, New India Assurance Company Ltd**, the notional income of a B-tech graduate in computer technology involved in an accident of the year 2011 was fixed by the Apex Court at Rs.20,000/-.

12. The learned counsel for the 3rd respondent would argue that the petitioners have claimed only Rs.15,000/- and hence notional income of the deceased cannot be fixed over and above, what is claimed in the original petition. However, the law is well settled that the tribunal as well as this Court have not only the power but the duty to award just and reasonable compensation to victims of road traffic accidents and, for the said purpose, in deserving cases the notional income can be fixed over and above what is claimed in the original petition. (**Sasidharan Namboothiri and Others v. Rajeev Kesavan and Others, [2025 KHC OnLine 85]**)

13. In the above circumstances, in the light of the decision of the Hon'ble Supreme Court in **Kanthasami** (supra) and **Basanti Devi**



(Supra), I am inclined to fix the notional income of the deceased at Rs.20,000/-.

14. On the date of accident, the deceased was aged 25 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 18, as held in **Sarla Verma v. Delhi Transport Corporation**, (2009) 6 SCC 121. Since the deceased was a bachelor who left behind 3 dependents, 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.30,24,000/-.

15. The Tribunal has awarded Rs.25,000/- towards loss of estate, Rs.25,000/- towards funeral expenses 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.96,800/- (48,400 x 2).

16. 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.

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.32,14,100/-, 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	Loss of dependency	12.96,000/-	30,24,000/-
2	Transportation expenses	2,000/-	2,000/-
3	Funeral expenses	25,000/-	18,150/-
4	Medical expenses	30,000/-	30,000/-
5	Compensation for pain and sufferings	25,000/-	25,000/-
6	Compensation for loss of estate.	25,000/-	18,150/-
7	Compensation for loss of love and affection	50,000/-	-----
8	Loss of consortium	-----	96,800/-
	Total	14,53,000/-	32,14,100
	Enhanced Rs. 17,61,100/-		

19. In the result, this Appeal is allowed in part, and the 2nd respondent is directed to deposit a total sum of Rs.32,14,100/- (Rupees thirty two lakhs fourteen thousand and one 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, excluding interest for a period of 109 days, the period of delay in filing the appeal, with proportionate costs, within a period of two months from today. (Interest for the enhanced compensation is limited to 8%)

20. 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

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