



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

TUESDAY, THE 25TH DAY OF FEBRUARY 2025 / 6TH PHALGUNA, 1946

MACA NO. 1727 OF 2021

AWARD DATED 10.03.2021 IN OP(MV) NO.1497 OF 2018 OF II ADDITIONAL
MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD

APPELLANTS/RESPONDENTS 1 & 2:

- 1 BABY
AGED 52 YEARS
W/O.SREEDHARAN, VADAKKEKKARA HOUSE, P.O.KAVALAPPARA,
OTTAPALAM - 679 523, PALAKKAD DISTRICT. (OWNER OF THE MOTOR
CYCLE REG.NO.KL-51 E 1084).

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SUMESH, AGED 36 YEARS,
S/O.VASUDEVAN, NECHIKKOT PARAMBIL HOUSE, ARANI, KAVALAPARA,
KULAPPULLY, PALAKKAD - 679 523.

BY ADVS.
K.P.SATHEESAN (SR.)
P.MOHANDAS (ERNAKULAM)
K.SUDHINKUMAR

RESPONDENTS/PETITIONER & 3RD RESPONDENT:

- 1 KUNCHU
AGED 71 YEARS
S/O.LAKSHMI CHETTIYAR, (THE PETITIONER IS HUSBAND OF THE
DECEASED PARUKUTTY) RESIDING AT KARUMATHILTHODI,
VANIYAMKULAM - 1, KOONATHARA, OTTAPALAM, PALAKKAD - 679 523,
NOW RESIDING AT PANDALATTUPARAMP, VANIYAMKULAM
PANCHAYATH, OTTAPALAM, PALAKKAD - 679 523.

- 2 UNITED INDIA INSURANCE CO.LTD.
REPRESENTED BY ITS MANAGER, PLI BRANCH, SOORYA COMPLEX,
MISSION HIGH SCHOOL JUNCTION, T.B.ROAD, PALAKKAD - 678 014
(INSURER OF THE MOTOR CYCLE REG.NO.KL 51 E 1084), POLICY
NO.1012033117-112856309 VALID FROM 20/12/2017 TO 19/12/2018.

R2 BY ADV. SRI. P.K.MANOJKUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
24.02.2025, THE COURT ON 25.02.2025 DELIVERED THE FOLLOWING:



JOHNSON JOHN, J.

M.A.C.A No. 1727 of 2021

Dated this the 25th day of February, 2025.

JUDGMENT

Respondents 1 and 2 in O.P.(MV) No. 1497 of 2018 on the file of the Motor Accident Claims Tribunal, Palakkad filed this appeal challenging their liability to pay compensation and the maintainability of the claim petition.

2. According to the claim petitioner, he is the husband of late Parukutty, who died in a motor vehicle accident. It is alleged that on 25.03.2018, while the deceased was standing on the side of the road, motorcycle ridden by the 2nd respondent in a rash and negligent manner caused to hit her and thereby, she sustained serious injuries and subsequently succumbed to her injuries, while undergoing treatment in the hospital on 30.03.2018.

3. Before the Tribunal, the appellants herein were *ex parte* and only the 3rd respondent insurance company contested the matter. From the side of the petitioner, Exhibits A1 to A10 were marked and from the side of the 3rd respondent, Exhibits B1 and B2 were marked.



4. The Tribunal arrived at a finding that the accident occurred because of the negligence on the part of the 2nd respondent and that respondents 1 to 3 are jointly and severally liable to pay compensation. The Tribunal also found that the 2nd respondent was not having a valid driving licence and therefore, there is violation of policy conditions and hence, allowed the 3rd respondent insurance company to recover the amount from the 1st respondent, owner of the vehicle after payment to the petitioner.

5. Heard Sri. K. Sudhinkumar, the learned counsel for the appellants and Sri. P. K. Manoj Kumar, the learned counsel for the 3rd respondent insurance company.

6. The learned counsel for the appellants argued that the claim petitioner is not the husband of the deceased and in the absence of any valid marriage, the Tribunal ought to have found that the petitioner is not a dependent of the deceased. As noticed earlier, the appellants herein were *ex parte* before the Tribunal and no written statement was filed raising such a contention. The Tribunal has considered the contention of the 3rd respondent insurance company regarding the



validity of the marriage between the petitioner and the deceased and after analyzing Exhibit A1, First Information Statement, and Exhibit A10, certificate issued by the Village Officer, arrived at a finding that the petitioner and the deceased were living together as husband and wife and since they were depending each other, the petitioner is entitled for compensation as a dependent of the deceased.

7. The fact that the petitioner was living with the deceased is seen admitted in the written statement of the 3rd respondent. From Exhibit A1 First Information Statement, it can be seen that the petitioner was living along with the deceased for the last more than 5 years. Exhibit A10 certificate issued by the Village Officer also shows that the petitioner is the husband of the deceased. Therefore, considering the facts and circumstances, I find no reason to disagree with the finding of the Tribunal that since the petitioner was living with the deceased as her husband for about 5 years prior to the occurrence and since they were depending each other, he is entitled to the compensation for the death of the deceased and therefore, I find that the contention of the appellants in this regard is not legally sustainable.



8. The appellants are also challenging the finding of the Tribunal that the accident occurred because of the negligence on the part of the 2nd respondent. A perusal of Exhibits A1 to A4, would show that the police registered a crime in connection with the accident and after investigation, filed charge sheet against the 2nd respondent for the offences under Sections 279, 338 and 304A IPC and the Tribunal also relied on the decision of this Court in New **India Assurance Company v. Pazhani Ammal and Others (2011(3) KLT 648)** for recording a finding of negligence against the 2nd respondent and I find no reason to interfere with the said findings of the Tribunal.

9. The Tribunal fixed the notional income of the deceased as Rs.10,000/- and considering the number of dependents, 50% was deducted towards the personal and living expenses of the deceased and also applied the correct multiplier and awarded Rs.5,40,000/- to the petitioner towards loss of dependency. The Tribunal also granted compensation towards conventional heads by following the principles laid down by the Honourable Supreme Court in **National Insurance Co. Ltd. v Pranay Sethi [(2017) 16 SCC 680]**. I find that the

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compensation granted by the Tribunal under all heads are reasonable and requires no interference.

10. For the aforesaid reasons, I find that this appeal is devoid of merit and is liable to be dismissed.

In the result, the appeal is dismissed.

sd/-
JOHNSON JOHN,
JUDGE.

Rv