

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 22ND DAY OF MARCH 2024 / 2ND CHAITHRA, 1946
MACA NO. 696 OF 2012
AGAINST THE ORDER/JUDGMENT DATED 31.03.2011 IN OPMV NO.57 OF
2004 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
APPELLANTS/PETITIONERS:

- 1 VALSALA M.G. (DIED) *
AGED 48, W/O. DECEASED VIKRAMAN, SREEVALSAM
HOUSE, B.T.S ROAD, EDAPPALLY, KOCHI - 24.
- 2 ARUN.M.V
S/O. DECEASED VIKRAMAN, SREEVALSAM HOUSE,
B.T.S.ROAD, EDAPPALLY, KOCHI - 24. *(IT IS
RECORDED THAT THE 2ND APPELLANT IS THE SOLE
LEGAL HEIR OF THE DECEASED IST APPELLANT AS
PER ORDER DATED 29/01/2024 IN MACA 696/2012)

BY ADV C.N.SAMEER

RESPONDENTS/RESPONDENTS 1 TO 4:-

- 1 M.B.KUNJUMHAMMED
MULAKKAPPILLY HOUSE, CHITTETHUKARA, KAKKANAD
P.O.-682 030.
- 2 THE NATIONAL INSURANCE CO.LTD.
MOTOR 3RD PARTY CLAIMS OFFICE, AJAY VIHAR,
M.G.ROAD, ERNAKULAM, PIN-682 031.
- 3 P.N.SHAJI
ZENITH COMPUTERS LTD., SKY BRIGHT BUILDING,
REVIPURAM, M.G.ROAD, ERNAKULAM, PIN-682 031.
- 4 ORIENTAL INSURANCE CO.LTD.
MOTOR 3RD PARTY CLAIMS OFFICE, OPP. OF NORTH
RAILWAY STATION, ERNAKULAM, PIN-682 017.
- 5 SHIBU JOSE
S/O.LATE JOSEPH.P.K, PARAPURAM HOUSE,
PANDAPPILLY P.O., PIN-686 672.

BY ADVS.
SRI.M.JACOB MURICKAN
SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 22.03.2024, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

ORDER

Originally this appeal has been preferred by the claimants in OP (MV) No.57 of 2004 on the file of Motor Accidents Claims Tribunal, Ernakulam, who are the legal heirs of deceased Vikraman, who died in a road traffic accident occurred on 02.08.2003. While the deceased was riding a motorcycle, KL-7/AD-4777 bus hit on a car bearing registration No.KL-7/Z-7052, which was waiting for taking a 'U' turn and due to that impact, the car knocked down Sri.Vikraman. The accident occurred due to the rash and negligent driving of the offending bus by its driver, the 5th respondent. That vehicle was duly insured with the 2nd respondent National Insurance Company. Sri.Vikraman was an electrician in BSNL, and he was aged only 58 at the time of his death.

2. The appellants filed OP(MV) No.57 of 2004 claiming compensation of Rs.5,00,000/-. But the Tribunal awarded only Rs.3,54,392/-, against which they preferred this appeal.

3. As per judgment dated 29.07.2022, this Court awarded enhanced compensation of Rs.5,99,508/- to the appellants with 9% interest from the date of petition till the date of deposit to be shared equally between the appellants. But, subsequently, the 2nd

appellant filed I.A No.1 of 2023 to recall the judgment and to reopen the appeal so as to record the death of the 1st appellant and to modify the appeal judgment suitably. He produced copy of the death certificate of the 1st appellant to show that the 1st appellant died on 17.02.2019. He produced legal heirship certificate of the deceased 1st appellant, to show that he is the sole legal heir of the 1st appellant.

4. Learned counsel for the 2nd respondent reported no objection in modifying the judgment or reopening the appeal so as to record the death of the 1st appellant. He has no objection to the judgment of this Court in MACA No.696 of 2012 dated 29.07.2022 or in permitting the 2nd appellant to receive whole of the enhanced compensation, being the sole legal heir of the deceased 1st appellant. But, according to him, since the 1st appellant died as early as on 17.02.2019, compensation for loss of consortium awarded to her after her death is liable to be deducted. Except that fact, he has no objection in upholding the judgment in MACA No.696 of 2012 dated 29.07.2022.

5. Heard learned counsel for the 2nd appellant and learned counsel for the 2nd respondent.

6. Learned counsel for the 2nd appellant would submit that,

as per Kerala Torts (Miscellaneous Provisions) Act, 1976, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. He relied on a decision of this Court **Anuradha Varma v. State of Kerala** (1993 (2) KLT 777) to say that, right to claim damages for pain and suffering of deceased survives to the legal representatives in the light of Section 306 of the Indian Succession Act, 1925 as well as Section 2 of the Kerala Torts (Miscellaneous Provisions) Act, 1976. So, according to him, though the 1st appellant is no more, her right to claim damages for loss of consortium will survive and the 2nd appellant, who is her sole legal heir, is entitled to claim the same.

7. Learned counsel for the 2nd respondent, relying on **Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram** [2018 (3) KLT Online 3095 (SC)], would submit that, 'consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual

relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of 'company, society, co-operation, affection, and aid of the other in every conjugal relation'. But, here the question is, once the surviving spouse is no more, whether her legal heirs can claim that amount after her death, which she was entitled to receive for loss of company, society, affection etc. of her husband, during her lifetime?

8. In the case on hand, the 1st appellant, who was the surviving spouse, was awarded compensation by the Tribunal towards loss of consortium, loss of love and affection etc. The appellate court was not informed of the factum of death of the 1st appellant till 29.03.2023. In the appeal, both the appellants were awarded amounts for loss of consortium @ Rs.44,000/- each as per judgment dated 29.07.2022 as if both of them were alive. But, the 1st appellant had died on 17.02.2019, i.e about 3½ years prior to the judgment in MACA No.696 of 2012. The 1st appellant was not liable to be awarded enhanced compensation under the head consortium, after 3½ years of her death. So, Rs.44,000/- given as enhanced compensation to the 1st appellant under the

head 'loss of consortium' after 3½ years of her death is liable to be deducted from the total amount of enhanced compensation awarded in MACA No.696 of 2012, as per judgment dated 29.07.2022. By deducting Rs.44,000/- from the enhanced compensation of Rs.5,99,508/-, the balance amount will come to Rs.5,55,508/-. With that modification, the table is reproduced below:

Head of claim (1)	Amount awarded by the Tribunal (2)	Amount awarded in appeal (3)	Amounts deducted in appeal (4)	Difference to be drawn as enhanced compensation (5)
Loss of dependency	Rs.3,09,392/-	Rs.8,55,900 /-		Rs.5,46,508 /-
Transportation expenses	--	Rs.1,000/-		Rs.1,000/-
Damaged Clothing	--	Rs.1,000/-		Rs.1,000/-
Pain and Sufferings	Rs.10,000/-		Rs.10,000/-	
Funeral expenses	Rs.5,000/-	Rs.16,500/-		Rs.11,500/-
Loss of estate	Rs.5,000/-	Rs.16,500/-		Rs.11,500/-
Loss of consortium & Loss of love and affection	Rs.25,000/-	Rs.44,000/-	Rs.25,000/-	Rs.19,000/-
Total			Rs.35,000/-	Rs.5,90,508/-
Enhanced compensation = Rs.5,55,508/- (Rs.5,90,508/- - Rs.35,000/-)				

9. In the result, the 2nd appellant is entitled to get Rs.5,55,508/- (Rs.5,90,508/- - Rs.35,000/-) as enhanced compensation with 9% interest from the date of petition till the date of deposit.

The 2nd respondent/insurer submitted that the enhanced compensation as per the judgment of this Court in MACA No.696 of 2012 dated 29.07.2022 with interest was already deposited in the Bank account of appellants 1 and 2 in equal share. If that be so, the 2nd appellant is entitled to receive the entire amount including the amount deposited in the account of the deceased 1st appellant, except Rs.44,000/- and its interest. The 2nd respondent/insurer can withdraw Rs.44,000/- and its interest from the Bank Account of the deceased 1st appellant.

Modifying the judgment dated 29.07.2022 to the extent as above, the MACA stands disposed of.

Sd/-

**SOPHY THOMAS
JUDGE**

smp