

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 25<sup>TH</sup> DAY OF OCTOBER 2022 / 3RD KARTHIKA, 1944

MACA NO. 1779 OF 2015

AGAINST THE ORDER/JUDGMENTOPMV 702/2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL  
,PUNALUR

APPELLANTS/PETITIONER (CLAIMANTS) IN M.V.O.P.No.702/2007:

- 1 JIMMY  
S/O ABRAHAM, CHUNAYAM MAKKAM VEEDU, THEKKUMOOTIL PADY,  
PIRAVAM P.O., ERNAKULAM NOW RESIDING AT PUTHENVEEDU,  
ARUMURIKKADA, EDAPPALAYAM, ARAYANKAVU.
- 2 ROSAMMA  
D/O JAINAMMA, CHUNAYAM MAKKAM VEEDU, THEKKUMOOTIL PADY,  
PIRAVAM P.O., ERNAKULAM NOW RESIDING AT PUTHENVEEDU,  
ARUMURIKKADA, EDAPPALAYAM, ARAYANKAVU.
- 3 RIYA MINOR  
D/O JIMMY, CHUNAYAM MAKKAM VEEDU, THEKKUMOOTIL PADY, PIRAVAM  
P.O., ERNAKULAM NOW RESIDING AT PUTHENVEEDU, ARUMURIKKADA,  
EDAPPALAYAM, ARAYANKAVU REPRESENTED BY FATHER AND NATURAL  
GUARDIAN JIMMY, S/O ABRAHAM, CHUNAYAM MAKKAM VEEDU,  
THEKKUMOOTIL PADY, PIRAVAM P.O., ERNAKULAM NOW RESIDING AT  
PUTHENVEEDU, ARUMURIKKADA, EDAPPALAYAM, ARAYANKAVU.
- 4 LIBIYA MINOR  
D/O JIMMY, CHUNAYAM MAKKAM VEEDU, THEKKUMOOTIL PADY, PIRAVAM  
P.O., ERNAKULAM NOW RESIDING AT PUTHENVEEDU, ARUMURIKKADA,  
EDAPPALAYAM, ARAYANKAVU REPRESENTED BY FATHER AND NATURAL  
GUARDIAN JIMMY, S/O ABRAHAM, CHUNAYAM MAKKAM VEEDU,  
THEKKUMOOTIL PADY, PIRAVAM P.O., ERNAKULAM NOW RESIDING AT  
PUTHENVEEDU, ARUMURIKKADA, EDAPPALAYAM, ARAYANKAVU.

BY ADVS.  
SRI.ABRAHAM P.GEORGE  
SMT.M.SANTHY

RESPONDENTS/RESPONDENTS IN O.P.M.V.No.702/2007:

- 1 BHAGAVATHI AMMAL,G-61, REVATHI NIVAS, T.C.NO.50/74/1, KALADY,  
KARAMANA, THIRUVANANTHAPURAM. (DELETED)
- 2 PRAKASH KUMAR, ( DELETED)  
S/O SOMAN, MANAKKARA HOUSE, MULLUMALA, CHEMBANARUVI P.O.,  
PIRAVANTHUR.

3        *THE BRANCH MANAGER  
UNITED INDIA INSURANCE COMPANY LIMITED, P.B.NO.52,  
MALANKARA BUILDING, PALAYAM THIRUVANANTHAPURAM.*

*RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT  
THE RISK OF THE APPELLANT AS PER THE ORDER DATED  
14/7/2021 IN I.A 1/2021 IN MACA 1779/2015.*

*BY ADV S.JAYASREE*

*THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 25.10.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:*

## **JUDGMENT**

(Dated this the 25<sup>th</sup> day of October, 2022)

The appellants are the petitioners in O.P.M.V.No.702/2007 on the files of the Motor Accidents Claims Tribunal, Punalur.

2. On 28.03.2007 at about 4.15 pm deceased Liya, aged 5 years was walking through the northern side of Kollam- schencotta road along with her cousin sister Zonia. When she reached at Arumurikkada, Edappalayam, a Toyota car bearing registration number KL-01-AL-861 driven by the 2<sup>nd</sup> respondent, from the eastern side in a rash and negligent manner hit Liya and she fell down and sustained serious injuries on her head. She was immediately taken to Taluk Hospital, Punalur, where she succumbed to the injuries. The accident happened due to the rash and negligent driving of the Toyota car by the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent is the registered owner of the vehicle and the 3<sup>rd</sup> respondent is the insurer. They are jointly and severally liable to pay compensation to the petitioners. An amount of Rs.4 lakhs was claimed as

compensation.

3. Respondents 1 and 2 remained exparte. The 3<sup>rd</sup> respondent filed a written statement contenting that the driver was not at all rash and negligent as alleged in the original petition. The accident happened due to the negligence of the deceased girl as well as of her parents. When the vehicle was very close to the girl, all of a sudden, she jumped before the vehicle and hence the accident happened. The parents are negligent in this manner and did not care the girl while she was walking on the road, on the date of accident. The 3<sup>rd</sup> respondent admitted the insurance policy. The amount claimed is exorbitant without any basis, hence claimed for dismissal of OP.

4. The Tribunal awarded for the compensation of Rs.1,95,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. An amount of Rs. 1,000/- was ordered as costs, relying on Ext Nos. A1 to A6 and B1. Aggrieved by the compensation awarded, this appeal is filed by the appellants.

5. The counsel for the appellants submits that the loss of compensation awarded under the head of the pecuniary loss on account of the death of the deceased is lower and she relies on the decision of the Apex Court in **Kuruvan Ansari alias Kurvan Ali and Another V. Shyam Kishore Murmu and another [2021 KHC 6703]** wherein the Apex Court had an occasion to consider the compensation awarded to a minor aged 7 years and studying in class II. The Apex Court has held in Para 16 as follows:

“ In view of the above, we deem it appropriate to take notional income of the deceased at Rs. 25,000/-(Rupees twenty five thousand only) per annum. Accordingly, when the notional income is multiplied with applicable multiplier ‘15’ as prescribed in Schedule-II for the claims under S.163 – A of the Motor Vehicles Act 1988, it comes to Rs. 3,75,000/- (Rs. 25,000/-x Multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- towards funeral expenses. Thus, the appellants are entitled to the following amounts towards compensation:

- (a) Loss of Dependency : Rs.3,75,000-00
- (b) filial Consortium : Rs. 80,000-00  
(Rs. 40,000/-x 2)

(c) Funeral Expenses	: Rs. 15,000-00
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	:Rs. 4,70,000-00”

Taking note of the dictum laid down in the above decision, I am inclined to accept the notional income for calculating loss of dependency compensation as Rs.25,000/- per annum and multiplier of 15 as prescribed in Schedule II. Hence, under the head of compensation for the pecuniary loss on account of the death of the deceased can be calculated as  $25,000 \times 15 = 3,75,000/-$ , less what is awarded by the tribunal.

6. Towards loss of consortium, appellants 1 and 2 are the parents of the deceased, Liya. They are entitled to to Rs. 40,000 /- each plus 10% increase in every 3 years as held in **National Insurance Co.Ltd V. Pranay Sethi [(2017)] 4 KLT 662 SC**], hence, they are entitled for Rs. 88,000 /- on the said head.

7. A consolidated amount of Rs. 15,000/- was awarded under the heads funeral expenses and transportation expenses. As per **Pranay Sethi (Supra)**, the appellants are entitled to Rs. 15,000/-, plus 10% increase in every three years under the head

funeral expenses. Moreover Rs. 2,000/- is granted towards transportation expenses.

8. No amount was granted under loss of estate for which I grant an amount of Rs. 15,000/- plus 10% increase in every three year.

Accordingly the following enhancements are made to the Award passed by the Tribunal;

Sl. No.	The compensation claimed under different heads	Amt. Awarded by Tribunal (Rs.)	Amt. Enhanced in appeal (Rs.)
1	Compensation for the loss of dependency	1,80,000/-	3,75,000/-
2	Compensation for loss of consortium	-	88,000/-
3	Loss of Estate	-	16,500/-
4	Funeral Expenses	Consolidated amount 15,000/-	16,500/-
	Transportation Charges		2000
	Total	1,95,000/-	4,98,000/-
	Amount enhanced – 4,98,000 -1,95,000 = 3,03,000/-		

9. In the result the appeal is allowed and the appellants are entitled for enhance compensation of Rs.3,03,000/- ( Rupees Three lakhs and Three Thousand only) with interest at the rate of 7.5% per annum from the date of petition. The other directions regarding the deposit of compensation in the case of minors, is not interfered with and they are sustained. All other findings entered by the Tribunal stand confirmed.

10. If any amounts have already been paid, the same shall be granted set off. The claimants will have to pay Court fee for the total amount awarded which will be recovered by the Tribunal before disbursing the amount deposited. The claimants shall produce the details of the Bank account before the Insurance Company/Tribunal within one month from the date of receipt of a certified copy of this judgment and amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not furnished within the time stipulated, it is made clear that no interest shall run on the enhanced amount after the period stipulated by this Court.



This appeal was filed with the delay of 210 days. This Court by allowing the delay petition has held, if the ultimately the appeal is allowed and enhance compensation is allowed the appellants would not be entitled for the interest for the period of 210 days delay. Hence the claimants will not be entitled for interest on the enhanced compensation of 210 days.

Sd/-

**BASANT BALAJI,  
JUDGE**

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