

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 30TH DAY OF JUNE 2020/9TH ASHADHA, 1942

MACA.No.1936 OF 2008

AGAINST THE AWARD DATED 19.03.2008 IN OP(MV)NO.581/2002

OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA

APPELLANTS/PETITIONERS IN OP(MV) :

- 1 GLANIS, W/O. LATE ANIL ABRAHAM,
MANJAKADAMBIL HOUSE, KAKKOOR P.O.,
THIRUMARADY VILLAGE, MUVATTUPUZHA (VIA),
ERNAKULAM DISTRICT.
- 2 M.C. ABRAHAM, S/O. CHERIA,
MANJAKADAMBIL HOUSE, KAKKOOR P.O.,
THIRUMARADY VILLAGE, MUVATTUPUZHA (VIA),
ERNAKULAM DISTRICT. (DIED)
- 3 CHINNAMMA, W/O. M.C. ABRAHAM,
MANJAKADAMBIL HOUSE, KAKKOOR P.O.,
THIRUMARADY VILLAGE, MUVATTUPUZHA VIA,
ERNAKULAM DISTRICT.
- 4 ANCY JANSON, D/O M.C. ABRAHAM,
MANJAKADAMBIL HOUSE, KAKKOOR P.O.,
THIRUMARADY VILLAGE, MUVATTUPUZHA (VIA),
ERNAKULAM DISTRICT.
- 5 AJI ABRAHAM, S/O M.C. ABRAHAM,
MANJAKADAMBIL HOUSE, KAKKOOR P.O.,
THIRUMARADY VILLAGE, MUVATTUPUZHA (VIA),
ERNAKULAM DISTRICT.

(2ND APPELLANT DECEASED. THE OTHER LEGAL
HEIRS IMPEADED AS APPELLANTS 4 AND 5 AS PER
ORDER DATED 05.03.2020 IN IA-1/20 IN MACA
1936/08)

BY ADV. SRI.P.V.BABY

RESPONDENTS/RESPONDENTS IN OP (MV) :

- 1 LAZAR MANJILA, S/O. JOY MANJILA,
MANJILA HOUSE, FRANKLIN GARDENS,
ALUPURAM P.O., KUTTIKATTUKARA,
KADUNGALLUR VILLAGE, ERNAKULAM DISTRICT.
- 2 THE UNITED INDIA INSURANCE COMPANY
LIMITED, RAJAGIRI ROAD, KALAMASSERY-683 104.
- 3 C.A.ANOOP, CHEENAKKAPURAM HOUSE,
IRINJALAKUDA (DELETED)

RESPONDENT NO.3 IS DELETED FROM THE PARTY
ARRAY AS PER ORDER DATED 1/11/2013 IN IA NO
2739/13 IN MACA 1936/08

R1 BY ADV. SRI JOHN JOSEPH VETTIKKADU (BY
ORDER NO MEMO)

R2 BY ADV. SRI JOHN JOSEPH VETTIKKADU (BY
ORDER, NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 30.06.2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

[CR]

J U D G M E N T

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Dated this the 30th day of June, 2020

The question *inter alia* arising in this appeal is whether the entitlement of a widow for compensation consequent to the death of her husband in a road traffic accident, will diminish due to her remarriage during the pendency of the proceedings before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicles Act, 1988.

2. The 1st appellant is the wife and 2nd and 3rd appellants are the parents of late Anil Abraham. Anil Abraham, who was employed in Saudi Arabia and was

earning ₹25,000/- per month, was on leave. On 08.01.2002, while he was riding a motorcycle through Ernakulam-Palarivattom road, a car driven by its owner, took a U-turn and knocked down Anil Abraham. Anil Abraham sustained serious injuries. Though treated for injuries, he succumbed to the injuries, on 21.01.2002. Thereupon, the appellants filed OP(MV) No.581/2002 in the Motor Accidents Claims Tribunal, Muvattupuzha seeking a compensation of ₹25,00,000/-.

3. The 1st respondent-owner of the car contested the OP. The 1st respondent stated that accident was solely due to the negligent driving of motorcycle by the deceased Anil Abraham. The compensation claimed is exorbitantly excessive. The vehicle was covered by an insurance policy of the 2nd respondent-insurer. Therefore, the 1st respondent is not liable to pay any compensation.

4. The 2nd respondent-insurer stated that as the policy was issued in favour of the 3rd respondent in the OP(MV), it is not bound to indemnify the 1st respondent.

The policy holder did not report the accident to the insurer and consequently, policy condition is violated. The 2nd respondent also stated that the accident was due to the negligent driving by the deceased Anil Abraham. The compensation amount claimed is high. The 2nd respondent-insurer further stated that after filing the OP(MV), the 1st appellant married another person and is living with him. There is therefore cessation of dependency and 1st appellant is not entitled to any amount as compensation for the death of her former husband.

5. The appellants produced Exts.A1 to A27 documents. The 2nd respondent produced Exts.B1 and B2 documents. The appellants examined PWs 1 to 3. One Rev. Fr. C.K. Issac was examined as RW1 by the 2nd respondent.

6. Appreciating the evidence, the Tribunal concluded that the accident occurred due to the negligence of the 1st respondent, who was the driver of the car. The Tribunal accordingly passed an Award allowing a total

compensation of ₹7,64,500/- under the following counts:-

1.	Compensation for the death	₹5,28,000/-
2.	Transportation expenses	₹2,000/-
3.	Funeral expenses	₹5,000/-
4.	Loss of estate	₹2,500/-
5.	Medical expenses	₹1,82,000/-
6.	Compensation for pain and suffering	₹20,000/-
7.	Loss of consortium	₹10,000/-
8.	Compensation for loss of love and affection	₹15,000/-
	Total	₹7,64,500/- =====

The 1st appellant was held entitled to 25%, whereas appellants 2 and 3 were held entitled to 30% and 45% respectively, of the compensation amount. The Tribunal also granted interest at the rate of 8.5% per annum from the date of the OP(MV). The 2nd respondent-insurer was directed to make the payment.

7. The 2nd appellant-father of the deceased passed away during the pendency of this MACA and his surviving children were impleaded in the appeal as additional appellants 4 and 5.

8. Learned counsel for the appellants argued that the deceased was a Diploma holder in Engineering and an Instrument Technician working in a Gulf country. In 2002, the year of accident, the deceased was 29 years old. It is the argument of the counsel for the appellants that in spite of sufficient proof of the monthly income of ₹25,000/- of the deceased Anil Abraham, the Tribunal fixed notional monthly income at ₹6,000/-. The appellants had produced bank remittance statements of the deceased and perusing the same, the Tribunal itself had found that monthly remittances in Bank alone, by the deceased, can be treated as ₹7,500/-. But, in spite of that, the Tribunal held that the monthly income of the deceased Anil Abraham is ₹6,000/- and monthly contribution to the family is ₹4,000/-. Such fixation is abysmally low.

9. The Tribunal also omitted to consider future prospects in employment of the deceased while computing his notional income, contended the counsel for the appellants. In the light of the judgments of the Hon'ble Apex

Court in ***National Insurance Co. Ltd. v. Pranay Sethi and others*** [(2017) 16 SCC 680] as also in ***Rajesh and others v. Rajbir Singh and others*** [2013 (3) KLT 89], the Tribunal ought to have taken into account future employment prospects of the deceased.

10. The Tribunal adopted a multiplier of 11, taking into consideration the age of appellants 2 and 3. In fact, multiplier 17 should have been adopted on the basis of the age of the deceased, argued the counsel for the appellants. Such grave mistakes by the Tribunal has resulted in substantial loss to the appellants. The amount of ₹15,000/- awarded towards loss of love and affection to parents, is too low. Similarly, towards loss of consortium, only an amount of ₹10,000/- is awarded. Towards loss of estate, the amount of compensation awarded is only ₹2,500/-. The Tribunal granted only a token amount of ₹5,000/- towards funeral expenses. The amounts awarded under each of the afore heads are nowhere near to 'just compensation'. The learned counsel for the appellants relied on the judgments in

National Insurance Co. Ltd. v. Nelphona and others [2012 CDJ 3706], National Insurance Co. Ltd. v. Birender and others [2020 ACJ 759] and Amrit Bhanu Shali and others v. National Insurance Co. Ltd. and others [2012 (2) KLJ 816] to urge his points.

11. Learned Standing Counsel appearing for the 2nd respondent, on the other hand, argued that the amount of compensation awarded by the Tribunal is just and reasonable. The appellants failed to produce any reliable evidence to establish that the deceased had a monthly income of ₹25,000/-. The Tribunal has fixed the monthly income as ₹6,000/-, after appreciating the evidence. Similarly, the Tribunal adopted multiplier of 11 taking into account remarriage of the 1st appellant-wife.

12. The Standing Counsel argued that while computing compensation due to the wife of a deceased, who has remarried subsequently, necessarily the compensation should be brought down, having regard to the remarriage. The learned Standing Counsel relied on the

observations contained in the judgment of the Apex Court in ***The Managing Director, TNSTC v. Sripriya and others*** [(2007) 13 SCC 641]. The amount of compensation calculated by the Tribunal is therefore not liable to be interfered with, contended the Standing Counsel.

13. Heard learned counsel for the appellants and learned Standing Counsel for the 2nd respondent.

14. As regards the claim of income of the deceased Anil Abraham, the appellants produced Exts.A8, A10 and A16 documents to show that the deceased had passed Pre Degree course, obtained National Trade Certificate in Electronic-Mechanic and had undergone part-time course in TV Servicing and Repair under the LBS Centre for Science and Technology. The Tribunal disbelieved Ext.A16 certificate relating to the part-time course. Even discounting the said part-time course, the fact that the deceased had passed Pre Degree Course and held National Trade Certificate, is beyond dispute. Ext.A13 produced by the appellants was an identity card issued by the employer and Ext.A25, a work

permit. The Tribunal itself perused documents relating to bank transactions of the deceased marked as Exts.A21, A23, A24, A26 and A27 and concluded that the deceased had been contributing ₹7,500/- per month in an average, while he was abroad. This amount must be necessarily excluding the living and personal expenses of the deceased while he was abroad. Nevertheless the Tribunal fixed the income of the deceased as ₹6,000/- per month and his contribution to the family was fixed as ₹4,000/-.

15. Looking at the documents produced and proved by the appellants, this Court is of the opinion that the notional income so arrived at by the Tribunal, was much on a lower side. Considering the qualifications of the deceased and the remittances he was making while he was working abroad, the Tribunal ought to have fixed the income of the deceased at least at ₹7,500/- without making any deductions towards personal and living expenses. The Tribunal also ought to have granted enhancements towards future prospects in employment of the deceased. Viewed in

this angle, the monthly income of the deceased is liable to be fixed as ₹10,500/- (₹7,500 + ₹3,000 towards future prospects at the rate of 40%), for the purpose of computing compensation for dependency.

16. The next point arising for consideration is whether any reduction is to be made while computing compensation for dependency due to the appellants for the reason that the 1st appellant had remarried subsequent to the demise of late Anil Abraham. The judgment in ***The Managing Director, TNSTC (supra)*** of the Apex Court relied on by the 2nd respondent-insurer, related to adoption of multiplier. While generally dealing with the principles followed in framing the multiplier and calculating the multiplicand, the Hon'ble Apex Court referred to the opinion of Lord Wright in ***Davies v. Powell Duffryn Associated Collieries Ltd.*** [All ER 665 A-B], which was as follows:-

“The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for

his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt.”

The question whether dependency compensation has to be reduced in case of remarriage of the widow of a deceased, was not an issue in the case before the Apex Court. Therefore, the observations contained in ***Davies (supra)*** cannot be treated as the law laid down by the Apex Court.

17. A divorced wife or a widow can also maintain a petition under Section 166 of the Motor Vehicles Act, is a proposition now beyond doubt. Even if a remarried widow is not a dependent of the deceased, absence of dependency will not dis-entitle the widow to become a legal representative. In the judgment in ***Manjuri Bera v. Oriental Insurance Co. Ltd.*** [2007 ACJ 1279], the Apex Court held that compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Going by the said

judgment, even employed sons and married daughters can maintain an application under Section 166 of the Act. The principle underlying the exposition would equally apply to a remarried widow.

18. In ***Gujarat SRTC v. Ramanbhai Prabhatbhai*** [(1987) 3 SCC 234], the Apex Court held that a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child. Widow of a deceased victim, even after remarriage, continues to be the legal representative of her husband. The right of succession accrues immediately on the death of the husband and in the absence of any provision, she cannot be divested from the property vested in her due to remarriage. The right of the widow is a statutory right and the remarriage does not affect that right.

19. The objection of the learned Standing Counsel for the 2nd respondent is more on the compensation for dependency to be paid to the 1st appellant-widow, than on

the maintainability of a petition at her instance. Here, it is to be noted that the 1st appellant married the deceased in the year 2001 and within 90 days of marriage, her husband met with the accident on 08.01.2002 and died on 21.01.2002. The 1st appellant was only 21 years old at the time of her marriage. The 1st appellant had a remarriage on 23.01.2005. The question is whether remarriage by the widow after three years of the demise of her husband should be a reason to bring down compensation for dependency.

20. The couple had no children. Perhaps, the 1st appellant was persuaded by her former in-laws (parents of late Anil Abraham) to go for a remarriage or perhaps, the 1st appellant herself opted for it. In the present day society, no one wants or expects a young widow to lace herself in white attire or wear widow's weeds and mourn her entire life. The society has evolved. In spite of remarriage, a widow may keep her relations and discharge her duties towards her former in-laws even after remarriage. Such matters cannot

be speculated. Those are all imponderables. Courts will not normally entertain actuarial evidence on such imponderables.

21. In ***National Insurance Co. Ltd. represented by its Branch Manager, Trichy v. Nelphona and others*** [CDJ 2012 MHC 3706], the Madurai Bench of the Hon'ble Madras High Court observed that social change is an inevitable phenomena of every society. Whether the social change comes through legislation or through judicial interpretation, it indicates the change in the accepted mode of life or perhaps a better life. The changing patterns of life do have an impact on the law and life of a given society and the law must keep pace with the changing socio-economic trend in the society. In other words, the law should be an instrument of social change.

22. It is to be noted that the 1st appellant would not have thought of a remarriage, but for the untimely death of her husband. It was not a remarriage on account of divorce. The Court has to consider the psychological hurdles that the

widow will face on account of remarriage. The society is changing. The age old concept of a remarried widow cutting off all relations with the family of her ex-husband, is becoming a story of the past. Fact remains that the 1st respondent was dependent on the deceased and would have remained so, but for the demise of her husband consequent to the accident. The death has indeed resulted in loss of dependency. After the death of husband, a widow may go for employment and become self-dependent or may opt for remarriage. Either way, the loss of dependency consequent to the death of the husband does not cease merely because she has remarried or became self-reliant. *The word dependency and legal representative, therefore, should receive a pragmatic interpretation. While computing compensation for dependency of a widow on the death of her husband under Section 166 of the Motor Vehicles Act, 1988, her remarriage shall not be a decisive factor.*

23. In the case on hand, it is to be noted that while apportioning the compensation amount among the

appellants, the Tribunal has divided and allocated only 25% to the 1st appellant-widow and has awarded 75% of the compensation amount to the parents of the deceased. This is also one reason for this Court to hold that no further deduction on the compensation for dependency need to be made in respect of the amount payable to the 1st appellant.

24. The further question arising for consideration is the adoption of multiplier in computing the compensation. The Tribunal adopted the multiplier of 11. The Tribunal has adopted such multiplier mainly for the reason that the parents of the deceased are between the age group of 55 and 60 years. The Hon'ble Apex Court has held in the judgment in ***Amrut Bhanu Shali and others v. National Insurance Co. Ltd. and others*** [2012 (2) KLJ 816] that the selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different. The age of dependents has no nexus with the computation of compensation. A Division Bench of

this Court has also held the same view in ***Annamkutty v. United India Insurance Co. Ltd.*** [2013 (4) KLT 160]. In view of the authoritative pronouncements made by the Supreme Court and this Court on the multiplier to be adopted in a proceeding under Section 166 of the MV Act in the case of death, it is the age of the deceased that has to be taken into consideration and not that of the dependents. It necessarily follows that the multiplier to be adopted in the case on hand is 17, the age of the deceased at the time of death being 29 years.

25. In the light of the discussions made above, it is held that the compensation for loss of dependency to which the appellants are entitled to, would be ₹21,42,000/- (₹10,500 x 12 x 17). The Tribunal has already granted ₹5,28,000/- to the appellants for loss of dependency. Therefore, the appellants are held entitled to an additional compensation of **₹16,14,000/-** towards loss of dependency.

26. The Tribunal has granted only ₹5,000/- towards funeral expenses. Following the judgment in ***Pranay Sethi***

(supra) it has to be held that the appellants are entitled to ₹15,000/- towards funeral expenses. Accordingly, it is declared that the appellants are entitled to an additional compensation of **₹10,000/-** (₹15,000/- minus ₹5,000/- already awarded by the Tribunal) towards funeral expenses. The Tribunal has awarded only ₹2,500/- as compensation for loss of estate. Following the standardised rates laid down in ***Pranay Sethi*** (supra), the appellants are entitled to ₹15,000/- under this head. Therefore, it is declared that the appellants will be entitled to an additional compensation of **₹12,500/-** (₹15,000/- minus ₹2,500/- already awarded by the Tribunal) towards loss of estate.

27. The accident was on 08.01.2002 and the injured died on 21.01.2002. The Tribunal awarded ₹20,000/- towards pain and suffering. As the year of death is 2002, the amount awarded by the Tribunal towards pain and suffering is just and reasonable. The Tribunal awarded ₹10,000/- as compensation for loss of consortium. Adopting the rates contained in ***Pranay Sethi*** (supra), it is to be held

that the appellants are eligible for a compensation of ₹40,000/- towards loss of consortium. Accordingly, it is declared that the appellants will be entitled to an additional compensation of **₹30,000/-** (₹40,000/- minus ₹10,000/- already awarded by the Tribunal) towards loss of consortium.

28. The appellants have been awarded ₹15,000/- as compensation towards loss of love and affection. The appellant was aged 29 years at the time of death. The 1st appellant was newly married and the parents have lost their son at a young age. Considering the totality of the circumstances, the appellants should be held eligible for a compensation of ₹1,50,000/- (₹50,000 x 3) towards loss of love and affection. Accordingly, it is declared that the appellants will be entitled to an additional compensation of **₹1,35,000/-** (₹1,50,000/- minus ₹15,000/- already awarded by the Tribunal) under the head.

29. In view of the above, it is declared that the appellants will be entitled to a total additional compensation

of **₹18,01,500/-** under the following heads:-

(i)	Additional compensation towards loss of dependency	₹16,14,000/-
(ii)	Additional compensation towards funeral expenses	₹10,000/-
(iii)	Additional compensation towards loss of estate	₹12,500/-
(iv)	Additional compensation towards loss of consortium	₹30,000/-
(v)	Additional compensation towards loss of love and affection	₹1,35,000/-
	Total	₹18,01,500/- =====

The additional compensation so awarded will also carry interest at the rate of 8.5% per annum from the date of the OP(MV). The 2nd respondent is directed to pay the additional compensation within thirty days.

MACA is allowed as above.

Sd/-
N. NAGARESH, JUDGE

aks/25/06/2020