IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

MACA NO. 619 OF 2014

AGAINST THE ORDER DATED 23.10.2013 IN OP(MV) NO.323 OF 2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, kALPETTA

APPELLANT/13th RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LIMITED,
KOZHIKODE,NOW REPRESENTED BY ITS MANAGER,
REGIONAL OFFICE,M.G.ROAD,KOCHI-11.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS AND RESPONDENTS 1 TO 6.

1 KUNJIMUHAMMED,S/O.KUNHALANKUTTY,KOLAMBIL HOUSE,VELLAMUNDA VILLAGE,MANANTHAVADI.P.O,WAYANAD DISTRICT,PIN-670320.

2 ASYA,W/O.KUNJIMUHAMMED,KOLAMBIL HOUSE,VELLAMUNDA VILLAGE, MANANTHAVADI.P.O,WAYANAD DISTRICT,PIN-670320.

3 MASIDA,D/O.KUNJIMUHAMMED,KOLAMBIL HOUSE,VELLAMUNDA VILLAGE, MANANTHAVADI.P.O,WAYANAD DISTRICT,PIN-670320.

4 RAFEEDA,W/O.KUNJIMUHAMMED,KOLAMBIL HOUSE,VELLAMUNDA VILLAGE, MANANTHAVADI.P.O,WAYANAD DISTRICT,PIN-670320.

5 RAJU @ RAPHEL,S/O.PAILY,PALLIKKAL HOUSE,THONICHAL,MANANTHAVADI.P.O,WAYANAD DISTRICT,PIN-670320.

6 DEVASSYKUTTY,S/O.VARGHESE,5/873,PALLIYAN HOUSE,MANANTHAVADI.P.O,WAYANAD DISTRICT,PIN-670320.

7 THE MANAGER,UNITED INDIA INSURANCE COMPANY LIMITED,VETTUKATTIL BUILDINGS,M.G.ROAD,KOCHI-682016.

*8 ASGAR ALI,MANNAMKANDY HOUSE,HALBAR ROAD,VEERAJPET.P.O,PIN-670320.(DELETED) RESPONDENT NO. 8 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF APPELLANT VIDE ORDER DATED 18/2/15 IN IA NO 553/15IN MACA 619/2104

9 NAVAS,THALATHIL HOUSE,P.C.ROAD,MUKKAM.P.O,KOZHIKODE,PIN-673318.

10 NATIONAL INSURANCE COMPANY LIMITED
KOZHIKODE,PIN-673318.

R1 TO R4 BY ADVS.SRI.GEORGE THOMAS MEVADA (SR.)
SRI.MANU GEORGE KURUVILLA
SRI.AMAL GEORGE
R10 BY SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08.02.2024, ALONG WITH MACA.681/2014, 682/2014 AND MACA NO.3852/2017 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

MACA NO. 681 OF 2014

AGAINST THE AWARD DATED 23.10.2013 IN OP(MV) NO.323 OF 2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA

APPELLANT/6TH RESPONDENT IN THE OP:

NATIONAL INSURANCE CO. LTD.
KOZHIKODE, REPRESENTED BY ITS MANAGER, NATIONAL INSURANCE CO.LTD.,KOCHI, REGIONAL OFFICE, OMANA BUILDINGS, PADMA JUNCTION, KOCHI -35.
BY ADV SRI.A.R.GEORGE

RESPONDENTS/CLAIMANTS IN THE OP:

1 KUNJIMUHAMMED,
S/O.KUNJALIKKUTTY, KOLAMBIL HOUSE,VELLAMUNDA VILLAGE, MANANTHAVADI, WAYANAD DISTRICT, PIN-670 731.

2 ASYA
W/O.KUNJIMUHAMMED, KOLAMBIL HOUSE,VELLAMUNDA VILLAGE, MANANTHAVADI, WAYANAD DISTRICT, PIN- 670 731.

3 MASIDA
D/O.KUNJIMUHAMMED, KOLAMBIL HOUSE,VELLAMUNDA VILLAGE, MANANTHAVADI, WAYANAD DISTRICT, PIN- 670 731.

4 RAFEEDA,
D/O.KUNJIMUHAMMED, KOLAMBIL HOUSE,VELLAMUNDA VILLAGE, MANANTHAVADI, WAYANAD DISTRICT, PIN -670 731.

R1 TO R4 BY ADVS.SRI.AMAL GEORGE
SRI.GEORGE THOMAS MEVADA (SR.)
SRI.MANU GEORGE KURUVILLA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08.02.2024, ALONG WITH MACA.619/2014, MACA 682/2014, AND MACA 3852/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

MACA NO. 682 OF 2014

AGAINST THE AWARD DATED 23.10.2013 IN OP(MV) NO.172 OF 2010 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD,KALPETTA

APPELLANT/6th RESPONDENT IN THE OP

NATIONAL INSURANCE CO. LTD.
KOZHIKKODE, REPRESENTED BY ITS MANAGER, NATIONAL INSURANCE CO. LTD., KOCHI REGIONAL OFFICE, OMANA BUILDINGS, PADMA JUNCTION, KOCHI-35.
BY ADV SRI.A.R.GEORGE

RESPONDENTS/CLAIMANTS IN THE OP

1 S.ABDULLA,
S/O.KUNHAMMED HAJI, SAID HOUSE, KATTAYAD POST, VELLAMUNDA, MANANTHAVADY TALUK, WAYANAD DISTRICT -670 731.

2 SUBAIDA
W/O.ABDULLA, -DO- -DO-

3 NUBAISATH,
D/O.ABDULLA, -DO- -DO-

4 JUNAISATH,
D/O.ABDULLA, -DO- -DO-

BY ADV SMT.CELINE JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08.02.2024, ALONG WITH MACA.619/2014, MACA NO.681/2014 AND MACA 3852/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945

MACA NO. 3852 OF 2017

AGAINST THE AWARD DATED 23.10.2013 IN OP(MV) NO.172 OF 2010 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA

APPELLANTS/PETITIONERS:

1 S.ABDULLA
AGED 57 YEARS
S/O KUNHAMMED HAJI,(FATHER OF LATE MUHAMMED AFSAL)

2 SUBAIDA,
AGED 47 YEARS, W/O ABDULLA, (MOTHER OF LATE MUHAMMED AFSAL)

3 NUBAISATH,
AGED 29 YEARS, D/O ABDULLA, (SISTER OF LATE MUHAMMED AFSAL)

4 JUNAISATH,
AGED 25 YEARS, D/O ABDULLA, (SISTER OF LATE MUHAMMED AFSAL)
ALL ARE RESIDING AT SAID HOUSE, KATTAYAD POST,VELLMUNDA, MANANTHAVADY TALUK, WAYANAD DISTRICT

BY ADV. SMT.CELINE JOSEPH

RESPONDENTS/RESPONDENTS:

1 RAJU @ RAPHEL,AGED 48 YEARS, S/O PAILY, PALLIYAN HOUSE,THONICHAL, NALLOORNAD VILLAGE- 670645

2 DEVASSYKUTTY, S/O VARGHESE, PALLIYAN HOUSE, CHOOTAKADAVU ROAD,MANANTHAVADY POST, WAYANAD- 670645

3 THE BRANCH MANAGER, UNITED INDIA INSURANCE COM.LTD, VETTUKATTIL BUILDINGS,M.G ROAD, ERNAKULAM, KOCHI-682016

4 ASGAR ALI,AGED 29 YEARS, S/O MOIDEEN, MANDANKANDIL HOUSE,5TH MILE, KALLOOR, ANCHUKUNNU VILLAGE, PIN-670645

5 NAVAS,THALATHIL HOUSE, P.C ROAD, MUKKAM PO, CALICUT-673601

6 THE BRANCH MANAGER, NATIONAL INSURANCE COMPANY LTD, KALPANA SHOPPING COMPLEX, MAIN ROAD, KALPETTA -673121

R1 AND R2 BY ADVS.SRI.D.G.VIPIN
SRI.KAROL MATHEWS SEBASTIAN ALENCHERRY
SRI.DANIEL A.J.
R3 BY ADV.SRI.P.JACOB MATHEW
R6 BY ADV.SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING CBEEN FINALLY HEARD ON 08.02.2024, ALONG WITH MACA.619/2014, 681/2014 AND MACA 682/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MARY JOSEPH, J.

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M.A.C.A. Nos. 619, 681, 682 of 2014
and
M.A.C.A. No. 3852 of 2017

- -

Dated this the 8th day of February, 2024

JUDGMENT

The above four appeals have been originated from a common award passed by Motor Accident Claims Tribunal, Kalpetta (for short 'the Tribunal') on 23.10.2013 in OP(MV) Nos.323 of 2009 and 172 of 2010.

2. MACA No.619/2014 was filed by supplemental 13th respondent in OP(MV) No.323/2009, the insurer of the motorcycle bearing Registration No.KL-11/Z 9402 in which Mr.Fahad, the victim who died in the motor accident was pillion riding on the fateful day, challenging the award passed by the Tribunal on 23.10.2013 in O.P.(MV) No.323/2009 to the extent the Tribunal finds contributory negligence on the rider of the motorcycle, fixes 50% liability on him for causing the

motor accident and the insurer to pay 50% of ₹17,51,000/-, the compensation arrived at.

3. MACA Nos.681/2014 and 682/2014 were filed by the supplemental 6th respondent, the insurer of the car bearing Registration No.KL-57-1034 in OP (MV) Nos.323/2009 and 172/2009, challenging only the quantum of compensation stood awarded by the Tribunal in favour of the petitioners who are the legal representatives of Mr.Fahad and Mr.Mohammed Afsal respectively who died as a result of the injuries sustained by them in the motor accident occurred at about 3 p.m. on 10.03.2009 at Kommayad. No challenge was raised in the above appeals against the motor accident and the liability fixed by the Tribunal on them.

4. MACA No.3852/2017 was filed by the legal representatives of Mr.Mohammed Afsal who died on account of the injuries sustained in the motor accident challenging the mode of calculation adopted by the Tribunal and the quantum of compensation stood awarded by it in O.P. (MV)No.172/2010 in their favour and finding of negligence on

the deceased and fixation of 50% as his contribution to the motor accident.

5. Since MACA Nos.682/2014 and 3852/2017 were filed by the insurer of the car (6th respondent) and the petitioners respectively in O.P.(MV)No.172/2010 challenging the award, those are considered together first.

6. The motor accident in question which caused the cause of action for preferring the claims for compensation was occurred on 10.03.2009 at about 3:00 p.m. at Kommayad. The driver of the car bearing Registration No.KL-57/1034 proceeding towards Panamaram side applied break all on a sudden without signal and thereby the motorcycle proceeding behind it hit on it's rear side and thereby the rider and the pillion rider of the motorcycle fell on the road. A tipper lorry bearing Registration No.KL-12C/7902 proceeding against, ran over the rider as well as the pillion rider and thereby they sustained fatal injuries. Both the injured died at the spot of accident itself. The motor accident

was alleged as occurred due to the rash and negligent driving by the drivers of the tipper lorry bearing Registration No.KL-12C-7902 and the car bearing Registration No.KL-57/1034 respectively.

7. The Tribunal has fixed 50% contribution of negligence for the rider of the motorcycle towards the motor accident. The fixation of 50% negligence on him was based on the oral evidence let in by PW2 claiming to be an ocular witness. He had also stated during examination that the car overtook the motorcycle and stopped in front of it to avoid a ditch that exists on the road. The Tribunal found that the petitioners in O.P.(MV) No.172/2010 have not raised such a claim and therefore the version of PW2, as against their claim. The Tribunal having read the narration in the scene mahazar marked in evidence in the case as Ext.A2, found the presence of a ditch on the road, but 4 meters away from the accident spot on the eastern side of the road. The measurement of the ditch was also described in Ext.A2 as 1.3 metres long, 80 cm wide and 20 cm

deep. From the description, it could also be seen that both the car and the motorcycle were proceeding though the eastern side of the road at the relevant time.

8. The chargesheet was marked in the case as Ext.A4 without contest. It is found that contra evidence was not adduced by the insurer against Ext.A4, by which the driver of the tipper lorry bearing Registration No.Kl 12C/7902 as well as the driver of the car stood chargesheeted for rash and negligent driving. The investigating officer was not examined to establish any collusion behind chargesheeting the driver of the tipper lorry and the car for rash and negligent driving. Though it was contended by the insurer of the tipper lorry in the written statement filed that the driver of the tipper lorry was not negligent in driving it at the relevant time, failed to establish that. Even on a consideration of the evidence on record, this Court finds that the driver of the tipper lorry if had exercised reasonable care could have avoided the running of the same over the victims of the motor accident. It is stated in the final report filed and marked in evidence as Ext.A4 (copy of

which is Ext.B1) that prior to stopping the car, the driver failed to show signal. Accordingly the Tribunal found that the driver who stopped the car (R4) without signal, responsible for causing the motor accident. The Tribunal observed that if the 4th respondent had exercised vigilance and reasonable care expected from a driver at the relevant time, the accident could have been averted by him. This Court is hesitant to take a view contrary to that taken by the Tribunal. The view of the Tribunal undoubtedly is justified for the reason that the police after investigation has also laid a final report chargesheeting the driver of the car for rash and negligent driving and it formed part of the evidence as a document uncontested by the insurer while marking. It is an indisputable factum that an uncontested final report will form prima facie evidence of negligence in claims relating to motor accident. Therefore, it cannot be overlooked by the Tribunal. The Tribunal found 50% contribution of negligence from the driver of the car towards the motor accident. On the strength of the evidence available, this Court finds every reason to maintain that. The

challenge raised by the 6th respondent in MACA No.682/2014 against fixation of 50% liability on them is repelled for the reasons.

9. The rider of the motorcycle was found fastened with negligence without basis. Abated chargesheet was also not laid against him. Even going by the oral evidence of PW2 also it is noticed that the alleged ditch exists on the road 4 meters ahead the place of the motor accident. Therefore, it is difficult to believe that the driver stopped the car all on a sudden to avoid the ditch on the road. The Tribunal undoubtedly unjustified in fixing liability on the rider of the motorcycle from whose death in the motor accident, the claim for compensation in OP(MV) No.172/2010 was originated. The finding of 50% negligence on the rider of the motor cycle, fixing of entitlement of the petitioners in OP(MV) No.172 of 2010 to receive only 50% of the total compensation arrived at as payable and fastening of liability on the insurer of the motorcycle to pay 50% contribution to the petitioners in OP(MV) No.323 of 2009 are only to be set aside and this Court

do so.

10. Then the next question to be dealt with is the reasonableness of the quantum stood awarded by the Tribunal as compensation in O.P.(MV) No.172/2010 in favour of the legal representatives of Mr.Mohammed Afsal who died in the motor accident.

11. Petitioners in O.P.(MV) No.172/2010 are the parents and siblings of Mr.Mohammed Afsal who died in the motor accident. Dispute is not found raised by the respondents in the Original Petition against the claim of the petitioners that Mr.Mohammed Afsal died in the motor accident occurred on 10.03.2009. The factum is also established from Exts.A1, A4 and A5. The relationship of petitioners with the deceased is also established from Ext.A6. Evidence is also let into establish that petitioners 3 and 4, who are sisters of the deceased are married and staying away with their husbands. Therefore, petitioners 1 and 2 alone are the legal heirs of the deceased, entitled to get compensation. The factum also remains that Mr.Mohammed Afsal was a bachelor at the relevant time of his

death. The notional income of the deceased was fixed by the Tribunal as ₹3,000/-. As per the claim of petitioners in the Original Petition the deceased was a student cum tutor at the relevant time of the motor accident. He was aged 19 years at that point of time. Though the deceased was pleaded by the petitioners in the Original Petition as a tutor, no evidence was adduced by them to establish so and the monthly income earned by him. However, since the deceased at the relevant time of his death was aged 19 years, there is every possibility for him to obtain a job within 2-3 years. When viewed in that angle, the fixation of ₹3,000/- notionally as monthly income is on the lowerside. This Court finds it appropriate to refix it as ₹7,000/-. Deceased being a bachelor at the relevant time of his death, half of the monthly income is liable to be deducted having due regard to the expenditure, he would have spent to meet his personal needs had he been alive. The Tribunal has applied it correctly. Multiplier of 18 was also adopted by it. The Tribunal had also considered 40% addition to the monthly income towards loss of future prosepcts having due regard to

the age of the deceased and his untimely death in the motor accident. That being correctly considered is maintained. Compensation for loss of dependency is re-calculated on the basis of the modified monthly income and thus, ₹10,58,400/- is arrived at.

12. It is found that ₹25,000/- and ₹5,000/- respectively were awarded by the Tribunal as compensation towards funeral expenses and loss of estate against the direction of the Constitution Bench of the Apex Court in **National Insurance Co.Ltd. v. Pranay Sethi and others** [2017 (4) KLT 662(SC)] to pay ₹15,000/- each. Therefore, ₹15,000/- each is awarded under the above heads.

13. ₹1,00,000/- was also awarded by the Tribunal towards loss of love and affection, for which the petitioners are not entitled to. On the contrary petitioners 1 and 2 are entitled to get ₹40,000/- each as compensation towards loss of consortium and thus ₹80,000/- is arrived at. ₹1,000/- was awarded by the Tribunal towards transportation expenses and it being reasonable is maintained.

14. In the fresh calculation as above, petitioners are entitled to get ₹11,69,400/- as total compensation in the place of ₹6,17,000/- stood awarded by the Tribunal. 7.5% was found fixed by the Tribunal as interest and it being reasonable is maintained. Thus M.A.C.A. No.3852/2017 and M.A.C.A. No.682/2014 are allowed in part.

15. MACA Nos .619/2014 and 681/2014 are originated from the award pased by the Tribunal in OP(MV) No.323/09 and the challenge against is respectively to the extent of fixation of 50% negligence each on the rider of the motorcycle and the driver of the car and 50% liability on the insurers of those. Challenge was also raised against the quantum of compensation in both appeals.

16. OP(MV) No.323/2009 was a claim petition preferred before the Tribunal by the petitioners who are legal representatives of Mr. Fahad who was on the pillion seat of the Motorcycle bearing Registration No.KL-11/Z-9402 and died due to the injuries sustained in the motor accident occurred on 10.03.2009.

17. As per the claims of the petitioners in OP(MV) No.323/2009, Mr.Fahad was aged 23 years and employed as salesman in a supermarket at Sharjah. The salary certificate was marked in evidence as Ext.A12. Ext.A12 was found issued by one Mr.Abdulla in his capacity as Manager of a company named 'Hital Al Madina Supermarket, L.L.C, Sharjah, UAE. The so called manager was not examined and therefore, Ext.A12 was marked subject to proof. The passport of the deceased is marked in evidence as Ext.A13 and it shows that the petitioner was at Sharjah at the relevant time of the motor accident. The 1st petitioner, who is none other than the father of Mr.Fahad also deposed accordingly as PW1. Therefore, the claim of the petitioners that the deceased was employed at Sharjah is only to be accepted.

18. In the absence of any evidence regarding the nature of the job and the monthly income received by the deceased at the relevant time, the Tribunal opted to fix ₹10,000/- notionally as his monthly income. The insurer has raised a challenge against addition of 50% to the monthly income by

the Tribunal towards loss of future prospects for the reason that petitioner was not proved as a person employed with fixed salary. It stands established from Ext.A13 that Mr.Fahad had been working abroad since long. Therefore, he can be considered as a permanent employee. He was aged below 40 years also. Therefore, there is nothing wrong in the Tribunal fixing 50% addition to the monthly income fixed in consideration of loss of future prospects and that is maintained. Multiplier of 18 adopted by the Tribunal is also maintained being correct. Therefore, this Court finds that compensation for loss of dependency was calculated correctly and ₹16,20,000/- arrived at as compensation is a reasonable sum.

19. It is noticed that ₹1,00,000/-, ₹25,000/- and ₹5,000/- were awarded by the Tribunal respectively as compensation towards loss of love and affection, funeral expenses and loss of estate. Compensation was not awarded by the Tribunal towards loss of consortium though the deceased was survived by his father and mother. Sisters are not entitled to get compensation towards loss of consortium or

loss of love and affection. Father and mother are also not entitled to get compensation towards loss of love and affection. Therefore, ₹1,00,000/- stood awarded towards loss of love and affection is deducted.

20. As per **Pranay Sethi** supra, petitioners are entitled to get ₹15,000/- each as compensation towards funeral expenses and loss of estate and ₹40,000/- each, towards loss of consortium. Therefore, compensation is awarded accordingly under the above heads. ₹1,000/- stood awarded by the Tribunal towards transportation expenses is maintained. Thus the petitioners are entitled to get ₹17,31,000/- (₹16,20,000/- + ₹1,000/- + ₹15,000/- + ₹15,000/- + ₹80,000/-) as the modified compensation and the same is payable to the petitioners in OP(MV) No.323/2009, in the place of ₹17,51,000/- stood awarded by the Tribunal. Interest rate fixed by the Tribunal as 7.5% being reasonable is maintained.

21. The Tribunal has fixed 50% as the contribution of the rider of the motorcycle bearing registration No. KL-11/Z-

9402 involved in the motor accident and thus found the petitioners in OP(MV) No.323/2009, entitled to get only 50% of the amount arrived at as compensation from the insurer of the car, the 6th respondent.

22. In view of the reversal of liability of the rider of the motorcycle and fixation of liability on the driver of the tipper lorry, petitioners in OP(MV) No.323/2009 are entitled to get the full amount now arrived at as compensation with interest and costs. Similarly, the petitioners in OP(MV) No. 172/2010 are entitled to get compensation in the ratio 50:50 from the insurers of the car and the tipper lorry. The appellants in MACA Nos.682/2014 and 681/2014 (supplemental 6th respondent in OP(MV) No.323/2009) and the 3rd respondent in MACA No.3852/2017 (3rd respondent in OP(MV) No.172/2010) shall deposit the compensation with interest and costs in the ratio 50:50 in favour of petitioners in OP(MV) No.172/2010, within a period of two months from the date of receipt of a certified copy of this common judgment. MACA No.3852/2017 being filed with a delay of

1400 days, the respondents are exonerated from paying interest for that period. Compensation if any is already paid, the Tribunal shall adjust the same in the sum payable.

In the result, all appeals are allowed in part.

Sd/-
MARY JOSEPH
JUDGE

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