

M.A.C.A. No. 1287/2019 & connected : 1 :
case



2025:KER:20442

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

MACA NO. 1287 OF 2019

AWARD DATED 18.09.2018 IN OP(MV) NO.921 OF 2013 OF ADDITIONAL
MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA

APPELLANT/3rd RESPONDENT:

NATIONAL INSURANCE CO.LTD.,
DIVISIONAL OFFICE, KAYAMKULAM-690 502, REPRESENTED BY ITS
AUTHORIZED OFFICER, REGIONAL OFFICE, OMANA BUILDING,
M.G.ROAD, KOCHI-35.

BY ADVS.
SRI. GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN

RESPONDENTS/CLAIMANTS:

- 1 JOHN THOMAS,
S/O. Y.THOMASKUTTY, KUMARACHEMPARAMPIL, MOLY VILLA,
VATTAKARIKKOM, THINKALKARIKKOM P.O., KULATHUPUZHA,
KOLLAM – 691 310.
- 2 SHAUN JOHN (MINOR)
S/O JOHN THOMAS, KUMARACHEMPARAMPIL, MOLY VILLA,
VATTAKARIKKOM, THINKALKARIKKOM P.O., KULATHUPUZHA,
KOLLAM – 691 310.
- 3 SHREYA JOHN (MINOR)
D/O JOHN THOMAS, KUMARACHEMPARAMPIL, MOLY VILLA,
VATTAKARIKKOM, THINKALKARIKKOM P.O., KULATHUPUZHA, KOLLAM.
(THE FIRST RESPONDENT IS REPRESENTED BY Y.THOMASKUTTY,
S/O. YOHANNAN, KUMARACHEMPARAMPIL, MOLY VILLA,
VATTAKARIKKOM, THINKALKARIKKOM P.O., KULATHUPUZHA, KOLLAM.
AS A POWER OF ATTORNEY HOLDER AND PETITIONER NOS.2 AND 3
REPRESENTED BY THE ABOVE Y.THOMASKUTTY AS NEXT FRIEND)

M.A.C.A. No. 1287/2019 & connected : 2 :
case



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- 4 ANNAMMA ABRAHAM @SANTHAMMA
W/O. ABRAHAM MATHEW, PALAVILAYIL PUTHEN VEEDU, MANAKKALA
P.O., ADOOR – 691 551.

R1 TO R3 BY ADV. SRI.A.N.SANTHOSH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06.03.2025, ALONG WITH M.A.C.A NO. 2853 OF 2019, THE COURT ON
11.03.2025 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

MACA NO. 2853 OF 2019

AGAINST THE ORDER/JUDGMENT DATED 18.09.2018 IN OP(MV) NO.921 OF
2013 OF ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA

APPELLANTS/PETITIONERS:

- 1 JOHN THOMAS, AGED 43 YEARS, S/O. Y. THOMASKUTTY,
KURACHEMPARAMBIL, MOLY VILLA, VATTAKARIKKOM,
THINKALKARIKKOM P.O, KULATHUPUZHA, KOLLAM.
- 2 SHAUN JOHN, AGED 13 YEARS, S/O. JOHN THOMAS, MINOR,
KURACHEMPARAMBIL, MOLY VILLA, VATTAKARIKKOM,
THINKALKARIKKOM P.O, KULATHUPUZHA, KOLLAM.
- 3 SHREYA JOHN, AGED 8 YEARS
D/O. JOHN THOMAS, MINOR, KURACHEMPARAMBIL, MOLY VILLA,
VATTAKARIKKOM, THINKALKARIKKOM P.O, KULATHUPUZHA, KOLLAM.
(ALL THE APPELLANTS REPRESENTED BY Y. THOMASKUTTY, S/O.
YOHANNAN, AGED 71 YEARS, KURACHEMPARAMBIL, MOLY VILLA,
VATTAKARIKKOM, THINKALKARIKKOM P.O, KULATHUPUZHA, KOLLAM.
AS THE POWER OF ATTORNEY HOLDER OF THE 1ST APPELLANT AND
NEXT FRIEND.
- 4 ANNAMMA ABRAHAM @ SANTHAMMA,
AGED 6 YEARS, W/O. ABRAHAM MATHEW, PLAVILAYILPUTHENVEEDU,
MANAKKALA P.O, ADOOR.
BY ADV A.N.SANTHOSH

RESPONDENT/3RD RESPONDENT:

THE DIVISIONAL MANAGER,
NATIONAL INSURANCE COMPANY LTD., DIVISIONAL OFFICE, NELSON
COMPLEX, PUTHIYIDOM, P.B NO. 60, KAYAMKULAM-690 502.
BY ADVS.
GEORGE CHERIAN (SR.)
K.S.SANTHI
LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06.03.2025, ALONG WITH MACA.1287/2019, THE COURT ON 11.03.2025 DELIVERED
THE FOLLOWING:



JOHNSON JOHN, J.

M.A.C.A No. 1287 & 2853 of 2019

Dated this the 11th day of March, 2025.

JUDGMENT

These appeals are filed by the 3rd respondent insurance company and the claim petitioners challenging the quantum of compensation fixed by the Tribunal as per award dated 18.09.2018 in O.P.(MV) No. 921 of 2013 on the file of the Motor Accident Claims Tribunal, Pathanamthitta.

2. The petitioners are the legal heirs of Smt. Shiby Abraham, who died in a motor vehicle accident. According to the petitioners, on 09.05.2013, while the deceased was travelling as pillion rider in a motorcycle ridden by her father Abraham, lorry driven by the 1st respondent in a rash and negligent manner caused to hit the motorcycle and thereby, the rider and the pillion rider fell own and sustained serious injuries and subsequently, succumbed to their injuries. The 2nd respondent is the owner of the offending vehicle and 3rd respondent is the insurer.

3. The Tribunal jointly considered O.P.(MV) Nos. 920 and 921 of 2013 and from the side of the petitioners, PW1 examined and Exhibits



A1 to A38 were marked and no evidence adduced from the side of the respondents.

4. The Tribunal arrived at a finding that the accident occurred because of the negligence on the part of the 1st respondent and that respondents 1 to 3 are jointly and severally liable to pay compensation. The Tribunal awarded a total compensation of Rs.2,92,19,000/- to the petitioners.

5. Heard Sri. George Cherian, the learned Senior counsel for the appellant insurance company and Sri. A. N. Santhosh, the learned counsel for the appellant claim petitioners.

6. According to the claim petitioners, the deceased Shiby Abraham was aged 34 years and working in Australia as a registered Nurse at the time of the accident. In the claim petition, Rs.4,75,000/- was claimed as monthly income of the deceased. Based on Exhibit A19 employment contract and Exhibit A31 bank statement, the Tribunal found that the deceased was drawing \$2872/- in every two weeks and I find no reason to interfere with the said finding of the Tribunal.



7. The learned counsel for the appellant insurance company pointed out that the Tribunal, after arriving at a finding that the deceased was drawing \$2872 approximately every two weeks, fixed her monthly salary as \$6000/- and the same is not correct. I find that the salary for four weeks can only be \$5744.

8. The Tribunal calculated the exchange rate of Australian dollar as on the date of occurrence. But, the decision of the Honourable Supreme Court in **Shyam Prasad Nagalla v. Andhra Pradesh State Board Transport Corporation** [2025 KHC Online 7117] shows that compensation should be calculated at the exchange rate prevailing on the date of filing of the petition. The learned counsel for the appellants/claim petitioners filed an affidavit stating that the value of Australian dollar as on the date of filing of the petition ie., on 19.10.2013 was Rs.59.23 and the same is not disputed by the other side.

9. It is also not disputed that the deceased was liable to pay tax at the rate of 32.5C for the amount exceeding \$37,001. The total annual income of the deceased will come to \$68928/- and the tax payable will



be \$13948. After deducting the tax payable, the annual income of the deceased will be \$54,980/-. When the same is converted to Indian rupees, the amount will be Rs.32,56,465/- (54980 x 59.23).

10. The Tribunal has made an addition of 40% towards future prospects as per the decision of the Honourable Supreme Court in ***National Insurance Co. Ltd. v Pranay Sethi [(2017) 16 SCC 680]***. The learned counsel for the appellant/claim petitioners pointed out that as per the decision of the Honourable Supreme Court in ***Sarla Verma*** (supra), the multiplier applicable for persons aged between 31-35 years is 16 and the Tribunal applied the multiplier of '10' for the reason that if compensation is calculated by adopting the multiplier of 16, the amount will be huge and the said reasoning of the Tribunal is not legally sustainable.

11. It is well settled that the multiplier is to be selected on the basis of the age of the deceased at the time of the accident and therefore, I find that the Tribunal is not justified in not following the principles laid down by the Honourable Supreme Court in ***Sarla Varma***



v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)] for selecting the multiplier and that the correct multiplier applicable is 16.

12. The learned counsel for the insurance company cited the decision of the Honourable Supreme Court in **United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur and Ors.** [2020 (3) KHC 760 (SC)], wherein the Honourable Supreme Court deducted 50% of the income of the deceased as the deceased was living in a foreign country. In the said decision, the Honourable Supreme Court held thus:

“9.2. Even though in [Sarla Verma](#) (supra), it was held that the deduction towards personal and living expenses should be 1/4th, if the number of dependant family members is four, in the present case, we feel that 50% of the income of the deceased would be required to be deducted, since he was living in a foreign country.

The deceased had to maintain an establishment there, and incur expenditure for the same in commensurate with the high cost of living in a foreign country. Therefore, we are of the view that the High Court rightly deducted 50% of his income towards personal and living expenses.”

13. Therefore, considering the fact that the deceased was working in Australia and taking note of the personal and living expenses of the deceased in Australia, I find that 50% of the income can be deducted towards personal and living expenses of the deceased. When the loss of



dependency is calculated as per the revised criteria, the same would come to Rs.3,64,72,408/- $[(32,56,465 + 40\%) \times 16 \times \frac{1}{2}]$. The Tribunal had already granted Rs.2,91,06,000/- under this head. Therefore, an additional compensation of Rs.73,66,408/- is granted to the appellants/claim petitioners under this head.

14. The Tribunal granted the compensation under conventional heads by following the principles laid down by the Honourable Supreme Court in ***Pranay Sethi*** (supra) and I find that the compensation granted by the Tribunal under other heads are reasonable and requires no interference.

16. Accordingly, the appellants are entitled to the enhanced compensation as given below:

Particulars	Compensation awarded by the Tribunal (Rs.)	Additional amount granted by this Court (Rs.)
Loss of dependency	2,91,06,000/-	73,66,408/-
Total enhanced compensation		73,66,408/-

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15. In the result, M. A. C. A No. 1287 of 2019 is dismissed and M. A. C. A. No. 2853 of 2019 is allowed and a total amount of Rs.73,66,408/- (Rupees Seventy Three Lakhs Sixty Six Thousand Four Hundred and Eight only) is awarded as enhanced compensation. The said amount shall carry interest at the rate of 7% per annum from the date of the application till realization (excluding the period of delay of 91 days in filing the appeal). The appellants/claim petitioners would also be entitled to proportionate costs in the case. The claimants shall furnish the details of the bank account to the insurance company for transfer of the amount.

sd/-
JOHNSON JOHN,
JUDGE.

Rv