IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 4TH DAY OF JUNE 2026 / 14TH JYAISHTA, 1948

MACA NO. 349 OF 2020

OPMV NO.69 OF 2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MAVELIKKARA

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LIMITED
KOLLAM-691001, NOW REPRESENTED BY ITS ASSISTANT MANAGER, REGIONAL OFFICE, M.G. ROAD, KOCHI-11.

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

RESPONDENTS/PETITIONERS:

1 DEVAKI
AGED 67 YEARS
W/O. MADHAVAN, KAITHARAYIL, KARTHIKAPPALLY P.O, ALAPPUZHA DISTRICT, PIN-690516.

2 PANKAJAKSHNI
AGED 65 YEARS
D/O. KOCHUKUNJU, MOOSAKUTTY PADETTATHIL, CHERAVALLY MURI/P.O, KAYAMKULAM, ALAPPUZHA DISTRICT, PIN-690502.

3 CHELLAMMA
AGED 63 YEARS
W/O. RAGHAVAN, PALAKKOTTU VADAKKATHIL, KRISHNAPURAM P.O, ALAPPUZHA DISTRICT, PIN-690533.

4 SARADA
AGED 54 YEARS

D/O. KOCHUKUNJU, MOOSAKUTTY PADEETTATHIL, CHERAVALLY MURI/P.O, KAYAMKULAM, ALAPPUZHA DISTRICT, PIN-690502.

5 UNNI
AGED 52 YEARS
S/O. KOCHUKUNJU, MOOSAKUTTY PADEETTATHIL, CHERAVALLY MURI/P.O, KAYAMKULAM, ALAPPUZHA DISTRICT, PIN-690502.

BY ADVS.
SHRI.M.V.THAMBAN
SRI.R.REJI
SRI.ARUN BOSE
SMT.THARA THAMBAN
SRI.B.BIPIN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR HEARING ON 21.05.2026, THE COURT ON 04.06.2026 DELIVERED THE FOLLOWING:

“CR”

JUDGMENT

This appeal is filed by the third respondent/insurance company challenging the quantum of compensation awarded to the claimants in OP(MV) No.69 of 2015 on the files of the Motor Accidents Claims Tribunal, Mavelikara. The claim petition was filed by the siblings of the deceased, Ms. Santhamma, who lost her life in a road traffic accident that occurred on 04.10.2014, seeking compensation on account of the death of their sister. The respondents herein were the claimants before the tribunal.

2. For the sake of convenience, the parties are referred to as they are arrayed before the tribunal.

3. The case of the claimants was that on 04.10.2014, while the deceased was crossing the road through zebra line at Krishnapuram junction along the Kollam-Alappuzha National Highway, a scooter bearing Reg.No.KL-29G/6584 ridden by the first respondent in a rash and negligent manner, hit her, whereby she sustained fatal injuries and succumbed to the injuries. The claimants, being the legal heirs of the deceased, approached the tribunal claiming a total compensation of

₹5,00,000/-. Respondents 1 and 2, who were the driver and the owner of the offending vehicle respectively, remained *ex parte* before the tribunal. The third respondent insurer filed a written statement, admitting the policy coverage for the offending vehicle, but disputing the liability and quantum of compensation claimed. PW1 was examined and Exts.A1 to A20 & X1 were marked on the side of the claimants. The tribunal, after analysing the pleadings and materials on record, held that the accident took place on account of the negligence of the driver of the offending vehicle and awarded a sum of ₹6,89,400/- as compensation under different heads with interest @ 8% per annum from the date of petition till realization against the third respondent being the insurer; and in default of payment as above, penal interest @ 12% per annum was also awarded. The respondent insurer has come up in appeal, challenging notional monthly income fixed by the tribunal as well as the compensation awarded to the claimants towards loss of dependency.

4. I have heard Smt.Preethy R. Nair, the learned Standing Counsel for the insurer; and Sri.Arun Bose, the learned counsel for the claimants.

5. The main issue for consideration in this appeal is

whether the awarding of compensation to the claimants, who are the siblings of the deceased, under the head of loss of dependency is correct or not. According to the learned Standing Counsel for the insurer, the claimants, being major siblings of the deceased and residing separately with their respective families, were not dependent on the deceased and, therefore, are not entitled to compensation under the head of loss of dependency. Though a specific contention that the claimants, being the siblings, are not entitled to compensation for loss of dependency was raised by the insurer before the tribunal, relying on the evidence of PW1 (second claimant), the tribunal considered the claimants as dependents and awarded compensation towards loss of dependency. To substantiate the arguments, the learned Standing Counsel relied on the judgment of the apex court in **The New India Assurance Company Ltd.** v. **Anand Pal & Others** [2023 KHC 7268]. It was also the argument of the learned Standing Counsel that since the monthly pension of the deceased was only ₹6,285/-, the tribunal ought not have fixed the notional monthly income at ₹7,000/-. The learned Standing Counsel further argued that, since the deceased was a spinster, one-half of her income ought to have been deducted towards personal and living expenses. However, the tribunal deducted only one-third of the income, which, according to the learned Standing Counsel, is unsustainable.

6. The learned counsel for the claimants, on the other hand, argued that though the claimants were major siblings, since the deceased was unmarried, all the claimants were dependent on her and that the deceased was a pensioner and used to support the claimants being her siblings. It was further argued that if this Court finds that the claimants are not entitled to compensation under the head of loss of dependency, they being the siblings of the deceased would be entitled to compensation towards loss of estate as they inherit the estate of the deceased. In support of the above contention, the learned counsel relied on the judgment of this Court in **Elamma** v. **ICICI Lombard General Insurance, Mumbai** [2023 KHC OnLine 9728]. The learned counsel for the claimants further argued that even as per the judgment in **Ramachandrappa** v. **Manager, Royal Sundaram Alliance Insurance Company Ltd.** [(2011) 13 SCC 236], for an accident that occurred in 2014, the monthly income of a coolie is fixed at ₹9,500/- and sought for a refixation of the notional income at ₹9,500/-.

7. I have considered the rival contentions raised on both sides. It is an admitted fact that the claimants were all major siblings of the deceased. It is also admitted that the deceased was a spinster as well as a pensioner. As per Ext.A18 Treasury Passbook, the income of the deceased Santhamma is ₹6,285/-; however, the tribunal, on its

discretion, fixed the monthly income at ₹7,000/-. In the absence of any other document, Ext.A18 has to be relied upon to prove the income of the deceased; and since as per Ext.A18 Treasury Passbook, the income is ₹6,285/-, the tribunal ought to have taken only ₹6,285/- as the income of the deceased. Though the learned counsel for the claimants argued for a refixation of the notional income at ₹9,500/- relying on the judgment in **Ramachandrappa** (*supra*), the income fixed in **Ramachandrappa** (*supra*) cannot be applied in this case since the deceased was a pensioner. Moreover, there is no case for the claimants that the deceased was having any income other than pension and no appeal has been filed challenging the fixation of the income. Therefore, the argument of the learned counsel for the insurer has to be accepted and thus I am inclined to refix the notional income of the deceased at ₹6,285/-.

8. As regards the compensation towards loss of dependency, all the claimants were major siblings of the deceased. In order to prove dependency, evidence was adduced by PW1, who is the second claimant as well as one of the sisters of the deceased. She had deposed that she is also a spinster and was dependent on the deceased for her day-to-day living expenses. In the affidavit, PW1 stated as follows:

“2-ആം ഹർജിക്കാരിയായ ഞാൻ അവിവാഹിതയും, ടി ശാന്തമ്മയുടെ സംരക്ഷണത്തിലും, ടിയാളെ ആശ്രയിച്ചും, ജീവിച്ചു വന്നിരുന്നതും കൂടാതെ മറ്റ് ഹര്ജിക്കാര്ക്കും നല്ല സഹായങ്ങൾ ചെയ്തു വന്നിരുന്നതുമാകുന്നു. ടിയാളുടെ മരണം മൂലം എന്റെ ഏക ആശ്രയം തന്നെ ഇല്ലാതായിട്ടുള്ളതും, എനിക്കും, മറ്റ് ഹര്ജിക്കാര്ക്കും തീരാ വേദനയും വലുതായ കഷ്ടനഷ്ടങ്ങൾക്കും ഇട വന്നിട്ടുള്ളതും, ശാന്തമ്മയ്ക്ക് പ്രതിമാസം 7,000/- രൂപ വരുമാനമുണ്ടായിരുന്നതുമാകുന്നു.”

During cross-examination [Though it is noted by the tribunal as “Cross Examination (R2)”, it is seen from the impugned award that respondents 1 and 2 were *ex parte*. Hence, it has to be presumed that the tribunal mistakenly noted as “R2” instead of “R3”], PW1 stated as follows:

“<u>Cross Examination (R2)</u>

എവിടെ താമസം(Q). കായംകുളം ചെരാവ്. വീട്ടുപേര്(Q). Moosakutti Paditathil. Adhar Card ഹാജരാക്കാമോ? ഹാജരാക്കാം. വിവാഹിതയാണോ(Q). അല്ല. മരിച്ച ശാന്തമ്മ സഹോദരി. ശാന്തമ്മയുടെ അച്ഛനും അമ്മയും ജീവിച്ചിരിപ്പുണ്ടോ(Q). ഇല്ല. ശാന്തമ്മ വിവാഹിതയായിരുന്നോ(Q). അല്ല. ശാന്തമ്മ എവിടെ താമസം(Q). എൻ്റെ കൂടെ ആയിരുന്നു. Cheravu. എനിക്ക് ജോലിയില്ല. ഹർജിക്കാർ എല്ലാവരും പ്രത്യേകം പ്രത്യേകം കുടുംബമായി താമസിക്കുന്നു എന്ന് എതൃകക്ഷി പറയുന്നു(Q). ശരിയാണ്. അപകടം കണ്ടായിരുന്നോ(Q). അറിയില്ല. ശാന്തമ്മ എന്നു മരിച്ചു(Q). അറിയില്ല. എവിടെ - Treat ചെയ്തു(Q). Alappuzha Vandanam-ത്തായിരുന്നു. മരണ സമയത്ത് Hospital-ൽ ഞാൻ ഇല്ലായിരുന്നു. ഹർജിക്കാർ ശാന്തമ്മയെ ആശ്രയിച്ചല്ല ജീവിച്ചത്. ശരിയല്ല. ശ്ാന്തമ്മയെ ആശ്രയിച്ച് നമ്മളെല്ലാം ജീവിച്ചു.

9. Hence, during evidence, the second claimant had stated that her life was completely dependent on the deceased. In the cross-examination, she stated that everyone was dependent on the deceased. However, only the second claimant has given evidence before the tribunal and the other claimants did not mount the box. During cross-examination, PW1 has also stated that all the other claimants are living separately with their respective families. All of them are majors. Unless proper evidence is adduced to establish that the other claimants

were dependent on the deceased, they cannot be treated as dependents and, consequently, are not entitled to compensation under the head of loss of dependency. However, insofar as the second claimant is concerned, the evidence on record establishes that she, being a spinster, was residing with the deceased and was wholly dependent on her. Therefore, the second claimant is entitled to be treated as a dependent of the deceased. Hence, I hold that the second claimant is entitled to compensation towards loss of dependency. Since it is found that the second claimant was a dependent of the deceased, the question regarding compensation under the head of loss of estate to the other siblings also does not arise.

10. As the monthly income of the deceased is refixed at ₹6,285/-, compensation towards loss of dependency has to be recalculated. The deceased was 57 years old at the time of the accident. Hence, for assessing compensation towards loss of dependency, 10% future prospects has to be added to the refixed income as per the judgment of the apex court in **National Insurance Co. Ltd.** v. **Pranay Sethi** [2017(4) KLT 662(SC)]. Thus, after adding 10% future prospects, the notional income would be ₹6,913.5/- (6285 + 628.5) for the purpose of calculating loss of dependency. It is seen that while assessing compensation for loss of dependency, the tribunal deducted only one-

third of the income towards personal and living expenses of the deceased. However, the deceased being a spinster, as per the judgment in **Pranay Sethi** (supra), the income to be deducted towards personal and living expenses is one-half and not one-third. Since the deceased was 57 years at the time of the accident, the multiplier to be adopted is “9” as per the judgment in **Sarla Verma** v. **Delhi Transport Corporation** [2010(2) KLT 802(SC)].

11. Thus, when recalculating loss of dependency applying the above standards and following the judgments in **Pranay Sethi** (*supra*) and **Sarla Verma** (*supra*), the second claimant will be entitled to get only a total compensation of ₹3,73,329/- (6913.5 x 12 x 9 x 1/2) towards loss of dependency, whereas the tribunal awarded ₹5,54,400/-. Hence, there will be a reduction for an amount of ₹**1,81,071/-** under the head of **loss of dependency**.

12. Since the insurer has not raised any other specific ground assailing the quantum of the compensation awarded by the tribunal under other heads, I am not inclined to interfere with the same.

13. On a perusal of the impugned award, it is seen that the tribunal awarded penal interest at the rate of 12%, which is not legally sustainable in view of the judgment of the apex court in **National**

Insurance Co. Ltd. v. Keshav Bahadur [2004 (2) SCC 370]. Accordingly, the direction of the tribunal awarding penal interest @ 12% per annum is hereby set aside.

Accordingly, the appeal is allowed in part and the impugned award is modified as follows:

a) The claimants will only be entitled to get a total compensation of ₹**5,08,329/-** (Rupees five lakh eight thousand three hundred and twenty nine only), with interest @ 8% per annum from the date of petition till realization and proportionate costs.

b) The second claimant alone shall be entitled to the compensation amount awarded towards loss of dependency with interest thereon. It is made clear that all the claimants including the second claimant will be entitled to get the balance compensation amount.

c) The direction of the tribunal awarding penal interest @ 12% per annum is hereby set aside.

d) The insurer shall deposit the total compensation together with interest and costs within a period of two months from the date of receipt of a certified copy of this judgment. The claimants shall furnish copies of the PAN Card, AADHAAR Card and bank details before the insurer within a period of one month so as to enable the insurance company to make the deposit as ordered above. In case of failure to furnish details as above, it shall be open for the insurance company to deposit the said amount before the tribunal. Upon such deposit being made, the entire amount shall be disbursed to the claimants at the earliest in accordance with law.

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-