

(2025) 01 KL CK 1787
In the High Court Of Kerala
Case No : MACA.307 Of 2015

James (Unsound Mind)

APPELLANT

Vs

Sajeevan

RESPONDENT

Date of Decision : 17-01-2025

Acts Referred:

Kerala Torts (Miscellaneous Provisions) Act, 1977 — Section 2

Citation : (2025) 01 KL CK 1787

Hon'ble Judges : C.Pratheep Kumar, J

Bench : Single Bench

Advocate : Anupama Johny, George Cherian, Latha Susan Cherian, K.S.Santhi

Final Decision : Partly Allowed

Judgement

C.Pratheep Kumar, J

1. The petitioners in O.P.(M.V.)No.1015/2009 on the file of the Motor Accident Claims Tribunal, Perumbavoor, are the appellants herein. The respondents in the O.P. are the respondents herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The petitioners 2 to 5 are the wife, minor children and mother of the deceased original petitioner. The original petition was filed claiming compensation for the injuries sustained by the deceased in a motor vehicle accident that occurred on 16.2.2009. According to them, on 16.2.2009 at 5.30 p.m, the Mini lorry bearing registration No.KL-11/2732 driven by the 1st respondent in a rash and negligent manner overturned into a canal, resulting in injuries to the late petitioner, who was working as the clearer in the said vehicle. He succumbed to the injuries on 7.9.2009.

3. The 1st respondent is the driver-cum-registered owner and the 2nd respondent is the insurer of the lorry. According to the petitioners, the accident occurred due to the negligence of the driver of the mini lorry. Therefore, they filed the OP claiming a compensation of Rs.23,41,000/- limited to

15,00,000/-.

4. The 1st respondent remained ex-parte. The 2nd respondent filed a written statement, admitting the policy and disputing the negligence on the part of the driver of the offending vehicle.

5. No oral evidence is adduced by either side. The evidence in the case consists of the documentary evidence Exts.A1 to A12 and B1.

6. After evaluating the evidence on record, the Tribunal awarded a total compensation of Rs.10,78,929/-

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners preferred this appeal.

8. Now the point that arises for consideration is the following:

Whether the quantum of compensation awarded by the Tribunal is just and reasonable.

9. Heard Smt.Anupama Johny, the learned counsel for the petitioners/appellants and the learned Standing Counsel Smt.Latha Susan Cherian.

10. The Point: In this case the accident and valid policy of the offending vehicle are admitted. Though in the written statement the 2nd respondent has contended that the accident occurred not due to the negligence of the 1st respondent, at the time of arguments such a contention was not taken. The petitioners produced Ext.A4, copy of the charge sheet involved in the crime registered against the driver of the offending vehicle, in respect to the above accident. In the light of the above charge sheet, negligence on the part of the driver of the offending vehicle stands proved. Therefore, the 2nd respondent, being the insurer, is liable to indemnify the compensation, which is liable to be awarded against the owner of the offending vehicle.

11. The incident was on 16.2.2009. The appellants claimed that being a cleaner in the lorry, the deceased was having a monthly income of Rs.5000/-However, they could not prove the said claim, by adducing evidence. Therefore, by virtue of the decision of the Hon'ble Supreme Court in Ramachandrappa v. Manager, Royal Sundaram Alliance [(2011) 13 SCC 236], his notional income is liable to be fixed at Rs.7000/-.

12. Since, on the date of accident, the deceased was aged 40 years, 25% of his income is to be added towards future prospects, and the multiplier to be applied is 15, in the light of the decision in National Insurance Co.Ltd v Pranay Sethi [(2017) 16 SCC 680].

13. The deceased being married and having 4 dependants, deduction towards his personal and living expense is 1/4 of his income , in the light of the decision of Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [(2009) 6 SCC 121]. Therefore, the loss of dependency will come to Rs.11,81,250/-.

14. The Tribunal has not awarded any amount towards loss of estate. Rs.25,000/- was awarded towards funeral expenses, and Rs.1,00,000/- towards loss of consortium. In the light of the decision in *Pranay Sethi (supra)*, the appellants are entitled to get a consolidated sum of Rs.15,000/- towards loss of estate, Rs.15,000/-towards funeral expenses, Rs.40,000/- each towards loss of consortium, with an increase of 10% in every three years. Therefore, the amount of compensation on account of loss of estate and funeral expense will come to Rs.18,150/- each and loss of consortium will come to Rs.1,93,600/- (48,400 x 4), to petitioners 2 to 5.

15. The Tribunal has awarded a sum of Rs.1,00,000/- towards love and affection. Since compensation for loss of consortium was given, further amount for love and affection cannot be granted, in view of the decision in *New India Assurance Company Ltd. v. Somwati and Others*, (2020)9 SCC 644. Therefore, the above sum of Rs.1,00,000/- given towards love and affection is to be deducted.

16. Towards pain and suffering, the Tribunal has awarded Rs.25,000/-alone which, according to the learned counsel for the petitioner is too low. According to him, the deceased lived for a period of seven months undergoing all the pain and suffering, till he breathed his last. Therefore, it was argued that towards pain and suffering, a considerable amount of compensation is to be awarded. On the other hand, the learned counsel for the 3rd respondent would argue that since the victim died, the legal heirs are not entitled to get any compensation for pain and suffering. She has also relied upon the decision of the Hon'ble Supreme Court in *Oriental Insurance Company Ltd. v. Kahlon @ Jasmil Singh Kahion*, AIR 2021 SC 3913, in which the Hon'ble Supreme Court held that the legal heirs are not entitled to get any compensation under the head pain and suffering as it is a personal injury suffered by the deceased.

17. However, in the State of Kerala by virtue of Section 2 of the Kerala Torts (Miscellaneous Provisions) Act, 1977 (in short the Act of 1977), the cause of action on account of the personal claim would survive to the legal heirs. Application of the above provision was dealt with by a Division bench of this Court in *Anuradha Varma v. State of Kerala*, 1993 (2) KLT 777. In paragraph 8 the Division Bench observed as follows :

"8. Coming to the merits of the case, we do not think that any interference is called for in regard to the award of the M.A.C.T. except in regard to pain and suffering for which no compensation was awarded by the Tribunal. As stated earlier, the Tribunal rejected the same on the basis of the concession made by the advocate that on the death of the original claimant Santharam Varma that claim abates and the legal representatives are not entitled to claim the same. In the light of Section 2 of the Kerala Torts (Miscellaneous Provisions) Act, 1977, even such claims survive the death of the injured. By Section 9 of the aforementioned Act, Section 306 of the Indian Succession Act, 1925, so far as it relates to right of action in torts, shall cease to apply to the State of Kerala. Accordingly the legal representatives are entitled to initiate an action for such

damages or to proceed with the claim already made by the injured. It is well settled that a concession by the advocate on a question of law is not binding on the parties and they are entitled to challenge the same in appeal.

18. In the decision in *Jaya v. Shaji*, 2014 (1) KLT 31, another Division Bench of this Court also had occasion to consider the effect of Section 2 of Act of 1977. In paragraph 6 the Division Bench held that :

"6. It is an admitted fact that Rajesh sustained injuries in a motor vehicle accident and the Tribunal also found that the accident occurred due to the negligent driving of the vehicle by its driver. It is also an admitted fact that he sustained severe injuries and underwent treatment for long time and thereafter he died later on 25/12/2001. It is true that there is no evidence adduced on the side of the appellants to prove that he died due to the injuries sustained by him in the accident. The Tribunal dismissed the application on the ground that the personal action will not survive after the death of the person under the principle *actio personalis moritu cum causa* (persona) (personal action will die with the person). But the Tribunal failed to understand that by virtue of S.2 of the Kerala Torts (Miscellaneous Provisions) Act, 1977 (Act 8 of 1977), (hereinafter called 'the Act'), the cause of action on account of the personal claim would survive to the legal heirs. S.2 of the Act reads as follows:

"2. Effect of death on certain causes of action.-- On the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery."

Further, in the decision reported in *Ali (Late) v. Sumesh*, 2010 KHC 6219 : 2010 (3) KLT 70, this Court has held that S.2 of the above Act is incorporated to undo the restriction introduced by S.306 of the Indian Succession Act. Further, in the decision reported in *Anuradha Varma v. State of Kerala*, 1993 KHC 419 : 1993 (2) KLT 777 : 1993 (2) KLJ 708 : ILR 1994 (1) Ker. 610, this Court, while interpreting S.2 and S.9 of the above Act, has held that legal representatives are entitled to initiate action for such damages or to proceed with the claim already made by the injured and that they are entitled to claim compensation under the head 'pain and suffering' of the deceased apart from other amounts payable to the injured as his legal heirs. So, under the circumstances, the Tribunal was not justified in dismissing the claim of the appellants on the ground that the personal action available to the deceased will not survive to his legal heirs after his death and the dismissal of the claim on that ground is unsustainable in law. In view of the discussions made above, the finding of the Tribunal to that effect is liable to be set aside. We do so. We hold that the application is maintainable and the appellants are entitled to claim compensation for the personal injury sustained by the deceased.

19. In the decision in Jyni and Ors. v. Raphael P.T. And Ors, 2016 (2) KHC 870, in a case where the victim died on the date of accident itself, a sum of Rs.10,000/- was awarded as compensation for pain and suffering by another Division Bench of this Court. In the decision in Mable and Ors. v. Lenoy Sebastian and Others, ILR 2024 (1) Ker. 958 a Single Bench of this Court awarded a compensation of Rs.1,00,000/- towards pain and suffering , in a case where the victim died after eight months. In Cholamandalam General Insurance Company Limited. v. Kusumam, MANU/KE/4552/2024, another Single Bench of this Court awarded Rs.25,000/- as compensation for pain and suffering in a case where the victim died on the date of accident. In the decision in Sanobanu Nazirbhai Mirza and Ors. v. Ahmedabad Municipal Transport Service, (2013) 16 SCC 719 also, a sum of Rs.25,000/- was awarded for pain and suffering in a case where the victim died on the date of accident. In Pushkar Mehra v. Brij Mohan Kushwaha and Others, 2015 KHC 4889 in a case of death of the victim on the spot, Rs.25,000/- was awarded for pain and suffering. Therefore, in the light of the above decisions and the provisions of the Act of 1977, I hold that in this case also the petitioners are entitled to get reasonable compensation under the head pain and suffering. Considering the facts I hold that a compensation of Rs.1,00,000/- will be a reasonable compensation for pain and suffering in this case.

20. Towards bystanders expense, the tribunal awarded only Rs.27,300/-. The petitioner was hospitalised as inpatient for 182 days before he succumbed to the injuries, on 7.9.2009. That means, he was bedridden for about 7 months before he died. Therefore, I hold that the compensation awarded towards bystander expense is on the lesser side, and hence it is enhanced to Rs.35,000/-(5000x7 months).

21. Towards extra nourishment, the tribunal has awarded Rs.5,250/-, which, according to the petitioners is on the lesser side. Considering the fact that the deceased was hospitalised as inpatient for 182 days before he succumbed to the injuries on 7.9.2009, the compensation awarded for extra nourishment is on the lesser side, and hence it is enhanced to Rs.20,000/-.

22. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

23. Therefore, the petitioners/ appellants are entitled to get a total compensation of Rs.19,08,404/-, as modified and recalculated above and given in the table below, for easy reference.

Sl.

No.

Head of claim

Amount awarded by the Tribunal(Rs)

The amount given in appeal (Rs.)

1

Loss of earnings

24500

24500

2

Partial loss of earnings

Nil

Nil

3

Transport to Hospital

5000

5000

4

Extra nourishment

5250

20000

5

Damage to clothes

500

500

6

Medical expenses

292254

292254

7

Attendance expenses

27300

35000

8

Disfiguration

Nil

Nil

9

Loss of love and affection

100000

Nil

10

Loss of consortium

100000

193600

11

Pain and suffering

25000

100000

12

Loss of amenities

20000

20000

13

Disability

Nil

Nil

14

Loss of earning power

Nil

Nil

15

Loss of estate

Nil

18150

16

Funeral expense

25000

18150

17

Loss of dependency etc

454125

1181250

Total

10,78,929

19,08,404

Amount enhanced

8,29,475

24. In the result, this Appeal is allowed in part, and the 2nd respondent is directed to deposit a total compensation of Rs.19,08,404/- (Rupees nineteen lakhs eight thousand four hundred and four only), less the amount already deposited, if any, along with interest as ordered by the Tribunal, from the date of the petition till realisation, with proportionate costs, within a period of two months from today (interest for the enhanced amount is limited to 8%). On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioners, in the ratio fixed by the Tribunal, excluding court fee payable, if any, without delay and as per rules. On payment, the 2nd respondent is permitted to recover the amount from 1st respondent.