
(2026) 03 KL CK 0721
In the High Court Of Kerala
Case No : MACA No. 1915 Of 2016

Mariyakutty

APPELLANT

Vs

United India Insurance Company Ltd

RESPONDENT

Date of Decision : 02-03-2026

Acts Referred:

Citation : (2026) 03 KL CK 0721

Hon'ble Judges : Shoba Annamma Eapen, J

Bench : Single Bench

Advocate : Avm.Salahudin, P.K.Manojkumar

Final Decision : Partly Allowed

Judgement

Shoba Annamma Eapen, J

1. This appeal is filed by the legal heirs of the claimant in O.P (MV) No.886 of 2015 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode, dissatisfied with the quantum of compensation awarded by the tribunal. The respondent herein was the third respondent before the tribunal.

2. According to the claimants, on 28.10.2014 at about 09.00 am, while the deceased was riding the scooter bearing reg. No. KL-57-G-7271, a motorcycle bearing registration No.KL-18-E-3871 ridden by the 2nd respondent in a rash and negligent manner hit on the scooter in which the deceased was riding. As a result of the accident, the deceased had sustained serious injuries and later succumbed to the injuries on the same day. The claimants, being the mother and siblings of the deceased, approached the tribunal claiming compensation.

3. The first and second respondents/owner and rider of the offending vehicle respectively, filed a written statement admitting the accident but denying the negligence attributed against the 2nd respondent and stated that the accident occurred due to the negligence of the deceased. It was further contended that the 2nd respondent was having a valid driving licence and the offending vehicle

was insured with the 3rd respondent. The 3rd respondent/insurer filed a written statement admitting the validity of the policy but disputing the quantum of compensation claimed. It was further submitted that at the time of accident, the deceased was not wearing a helmet. Before the tribunal, Exts.A1 to A8 were marked. The tribunal, after analysing the pleadings and materials on record, awarded a sum of ₹ 12,94,360/- as compensation under different heads with interest @9% per annum from the date of petition till realization with proportionate costs against the 3rd respondent being the insurer of the offending vehicle. Dissatisfied with the quantum of compensation awarded by the tribunal, the claimants, who are the legal heirs of the deceased, have come up in appeal.

4. Heard the learned counsel for the appellant/claimant and the learned standing counsel for the respondent/insurer.

5. The learned counsel for the appellant/claimant claims enhancement mainly under the following heads :

Notional income:- The learned counsel for the appellant submitted that though an amount of ₹ 20,000/- was claimed as the income of the deceased, the tribunal had taken only ₹ 5,000/- as notional income, who was an electrician cum plumber by profession. It is further submitted that, going by the judgment in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236], the income of a Coolie, for an accident in 2014, is fixed as ₹ 9,500/- and sought for enhancement of income. In order to award just and reasonable compensation, following the judgment in Ramachandrappa (supra), I find it appropriate to refix the income at ₹ 9,500/-.

Loss of dependency - Since the monthly income of the deceased is refixed at ₹ 9,500/-, compensation towards loss of dependency has to be recalculated. The deceased was 21 years old at the time of the accident and as per the judgment in National Insurance Co. Ltd. v. Pranay Sethi [2017(4) KLT 662(SC)], 40% future prospects can be added to the income now fixed. Thus, after adding 40% of the notional income towards future prospects, the amount would be arrived at ₹ 13,300/- (9,500 + 3,800) for calculating dependency. Accordingly, following the judgments in Pranay Sethi (supra) and Sarla Verma v. Delhi Transport Corporation [2010(2) KLT 802(SC)], the appellants will be entitled to get a total compensation of ₹ 14,36,400/- (13,300 x 12 x 18 x 1/2) towards loss of dependency. Since the tribunal has awarded an amount of ₹ 8,10,000/- towards loss of dependency, there will be an additional amount of ₹ 6,26,400/- under this head.

Funeral expenses, Loss of estate and Pain and sufferings :- On a perusal of the award, it is seen that the tribunal has awarded an amount of ₹ 25,000/- each towards funeral expenses and loss of estate and no amount was awarded under the head pain and sufferings. Going by the judgment in Pranay Sethi (supra), the compensation under the conventional heads ought to have been fixed at ₹ 15,000/- each. Hence, I find that the additional amount of ₹ 20,000/- awarded

under both the conventional heads can be adjusted towards the head of pain and sufferings. Thus, the heads get adjusted to each other.

Loss of consortium/loss of love and affection :- The learned standing counsel appearing for the insurance company submitted that the tribunal had awarded an amount of ₹ 4,00,000/- towards loss of love and affection, whereas only the 1st claimant, being the mother of the deceased, was entitled to compensation under the head of loss of consortium. It was further contended that the other three claimants, being the siblings of the deceased, were not entitled to any compensation under the head, loss of love and affection. In support of the contention, the learned standing counsel relied on the judgment of the Apex Court in *V.Pathmavathi and others v. Bharathi Axa General Insurance Company Ltd and others* [Manu/SC/0130/2026].

On the other hand, the learned counsel for the claimant submitted that no appeal has been filed by the insurance company challenging compensation awarded by the tribunal. It is further submitted that the siblings are entitled for compensation under the head loss of love and affection. He relied on the judgment of this Court in *New India Assurance Co. Ltd, Palakkad v. Sindhu K* [2025 KHC 125], *Indira Gangadharan and others v. Divisional Manager, Oriental Insurance Company Ltd and others* [MACA No.81 of 2020], judgment of Apex Court in *Radha Thevannoor v. M/s National Insurance Co.Ltd* [2025 KHC 7675] and the judgment of the High Court of Chattisgarh in *Raj Singh v. Dilip Ram* [2025 KHC 3780] and argued that the siblings are also entitled for compensation under the head loss of love and affection.

Now this court is called upon to decide whether siblings are entitled for compensation under the head loss of love and affection. It is true that no appeal is filed by the insurance company challenging the award passed by the tribunal. This court is also aware of the settled position that there shall not be any reduction of total compensation awarded, in a claimant's appeal. The constitutional Bench of the Apex Court in *Pranay Sethi (supra)* has recognized only three conventional heads under which compensation can be awarded in a death case viz loss of estate, loss of consortium and funeral expenses. However, in *Magma General Insurance Co.Ltd. v. Nanu Ram Alias Chuhru Ram* [(2018) 18 SCC 130], the Apex Court gave a comprehensive interpretation to the concept of consortium to include spousal consortium, parental consortium and filial consortium. In *Magma General Insurance(supra)*, it was held that loss of love and affection is subsumed within loss of consortium and cannot be awarded as a separate head of compensation. Admittedly, loss of consortium is classified into three categories, namely, spousal consortium, parental consortium, and filial consortium. For the death of a husband or wife, the surviving spouse is entitled to spousal consortium. In the case of death of a parent, the children/legal heirs are entitled to parental consortium. In the event of the death of a child, the parents are entitled to filial consortium.

In *Magma General Insurance(supra)*, it is held that loss of love and affection is

comprehensive to loss of consortium. Further in V.Pathmavathi (supra), the Apex Court has considered in detail the compensation payable under the head loss of consortium and loss of love and affection. That was a case filed by the widow of the victim, their two minor children and the victim's parents. In the afore case, there was no issue regarding compensation to be paid towards siblings. However, the Apex Court in V.Pathmavathi (supra) has held that it is bound by the law declared by the Constitution Bench in Pranay Sethi (supra) which does not recognize loss of love and affection as a distinct head of compensation. It was further held that no separate award under the head of loss of love and affection is warranted.

The judgments relied on by the appellant are distinguishable on facts and do not apply to the present case. In Sindhu K (supra) and Raj Singh (supra), the claim petition was filed by the sole legal heir who was the sibling. However, the judgment rendered by the Apex Court in Radha Thevannoor (supra) is not applicable in this case. The judgment rendered by this court in MACA No.81 of 2020 cannot be applied on the basis of the judgment in V.Pathmavathi (supra), Pranay Sethi (supra) and Magma General Insurance (supra). Thus following the judgment in V.Pathmavathi (supra), Pranay Sethi (supra) and Magma General Insurance (supra), I find that the siblings are not entitled for any compensation under the head loss of love and affection. In the present case, the tribunal has awarded an amount of ₹ 4,00,000/- under the head loss of love and affection. I find that the 1st claimant alone is entitled for an amount of ₹ 40,000/- towards loss of consortium. Hence, there will be a deduction of ₹ 3,60,000/- under the afore head.

6. On a perusal of the award and records available, I am not inclined to interfere with the compensation awarded by the tribunal under other heads since it appears to be just and reasonable.

7. Thus, the impugned award of the tribunal is modified as follows:

Sl. No

Head of Claim

Amount claimed

Amount awarded by the tribunal

Modified in appeal

Total compensation

1.

Transport to hospital

2,00

5,000

(not modified)

5,000

2.

Medical expenses

6,000

28,560

(not modified

28,560

3.

Hospitalization for 1 day

Nil

800

(not modified

800

4

Funeral expenses

50,000

25,000

15,000

5.

Loss of estate

Nil

25,000

15,000

6.

Pain and sufferings

-

-

20,000

7.

Love and affection

2,00,000

4,00,000

3,60,000(-)

40,000

8.

Loss of dependency

15,00,000

8,10,000

6,26,400

14,36,400

TOTAL

17,56,200

12,94,360

2,66,400

15,60,760

Accordingly, the appeal is allowed in part and the appellants/claimants are awarded an additional amount of ₹ 2,66,400/- (Rupees two lakhs sixty six thousand four hundred only) over and above the amount awarded by the tribunal with interest @9% per annum from the date of petition till realization and proportionate costs against the respondent being the insurer. The respondent insurer shall deposit the said amount 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, ADHAAR Card and bank details before the respondent 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 appellants at the earliest in accordance with law.

The ratio adopted by the tribunal has to follow as regards the enhanced compensation also.