2025:KER:30809

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR**

**WEDNESDAY, THE 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947**

**MACA NO. 1233 OF 2015**

**OPMV NO.1294 OF 2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PERUMBAVOOR**

**APPELLANT/RESPONDENT**

**BHUVANACHANDRAN**
**S/O THANKAPPAN, MANATHUPRAMBIL HOUSE, ELANJIPRA POST, CHALAKUDY, 680 001 ERNAKULAM DIST**

**BY ADVS.**
**SRI.VINOD VALLIKAPPAN**
**P.I. DAVIS PALAMATTATH ITTOOP**

**RESPONDENTS/PETITIONER/RESPONDENTS 2 AND 3**

1 **ANGEL ROSE**
**AGED 15 YEARS**
**(MINOR) (REP.BY MOTHER SINI JOHNSON W/O JOHNSON), D/O JOHNSON, MUTTATHIL HOUSE, THURAVOOR, ANGAMALY, ERNAKULAM DIST - 683 572**

2 **JOHNSON**
**S/O AUGUSTHY,MUTTATHIL HOUSE, THURAVOOR, ANGAMALY, ERNAKULAM DIST - 683 572**

3 **M/S UNITED INDIA INSURANCE COMPANY LTD.**
**BRANCH OFFICE, PARK HOUSE ROAD, NORTH TRISSUR, TRISSUR POST - 683 572**

**BY ADVS.**
**K.SHERIN MOHAN**
**AGINOV MATHAPPAN**

**THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13.3.2025, ALONG WITH MACA.1282/2015 AND 1499/2015, THE COURT ON 09.04.2025 DELIVERED THE FOLLOWING:**

2025:KER:30809

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR**

**WEDNESDAY, THE 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947**

**MACA NO. 1282 OF 2015**

**OPMV NO.1294 OF 2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL , PERUMBAVOOR**

**APPELLANT/3RD RESPONDENT IN THE OP**

**UNITED INDIA INSURANCE CO.LTD
THRISSUR, REPRESENTED BY THE DEPUTY MANAGER, UNITED INDIA INSURANCE COMPANY LIMITED, REGIONAL OFFICE, ERNAKULAM, SARANYA, HOSPITAL ROAD, KOCHI -11.**

**BY ADV SMT.RAJI T.BHASKAR-SC**

**RESPONDENTS/CLAIMANT & RESPONDENTS 1 AND 2 IN THE OP**

1 **ANGEL ROSE (MINOR)
D/O. JOHNSON, MUTTATHIL HOUSE, THURAVUR, ANGAMALY, REPRESENTED BY HER MOTHER SINI JOHNSON, W/O. JOHNSON, MUTTATHIL HOUSE, THURAVUR - 683 586.**

2 **BHUVANACHANDRAN
S/O. THANKAPPAN, MANATHUPARAMBIL HOUSE, ELANJIPRA P.O., CHALAKKUDY, PIN - 680 001 (DELETED)**

3 **JOHNSON
S/O. AUGUSTHY, MUTTATHIL HOUSE, THURAVUR, ANGAMALY -683 586
(RESPONDENTS 2 AND 3 ARE DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 17/02/2015 IN IA 4408/2015 IN MACA 1282/2015)**

**THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13.3.2025, ALONG WITH MACA.1233/2015 AND 1499/2015, THE COURT ON 9.4.2025 DELIVERED THE FOLLOWING:**

2025:KER:30809

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR**

**WEDNESDAY, THE 9TH DAY OF APRIL 2025 / 19TH CHAITHRA, 1947**

**MACA NO. 1499 OF 2015**

**OPMV NO.1294 OF 2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL , PERUMBAVOOR**

**APPELLANT/PETITIONER IN THE OP**

**ANGEL ROSE (MINOR)**
**D/O. JOHNSON, AGED 12 YEARS, MUTTATHIL HOUSE,THURAVOOR,ANGAMALY,REPRESENTED BY HER MOTHER SINI JOHNSON,W/O. JOHNSON,MUTTATHIL HOUSE,THURAVOOR,ANGAMALY**

**BY ADV SMT.ANUPAMA JOHNY**

**RESPONDENT/RESPONDENTS 1 AND 3 IN THE OP**

1 **BHUVANACHANDRAN**
**S/O. THANKAPPAN,MANATHUPARAMBIL HOUSE,ELANJIPARA P.O,CHALAKKUDY PIN 680 001**

2 **UNITED INDIA INSURANCE CO.LTD**
**BRANCH OFFICE, PARK HOUSE ROAD, NORTH THRISSUR, THRISSUR P.O**

**BY ADVS.**
**P.I. DAVIS PALAMATTATH ITTOOP**
**SMT.RAJI T.BHASKAR**

**THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13.3.2025, ALONG WITH MACA.1233/2015 AND 1282/2015, THE COURT ON 9.4.2025 DELIVERED THE FOLLOWING:**

2025:KER:30809

**JUDGMENT**

**Dated : 9th April, 2025**

The 1st respondent in OP(MV).1294/2009 on the file of the Motor Accidents Claims Tribunal Perumbavoor is the appellant in MACA 1233/2015. The 3rd respondent in the above OP is the appellant in MACA 1282/2015 and the petitioner in the OP is the appellant in MACA 1499 of 2015. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal)

2. The above claim petition was filed under Section 166 of the Motor Vehicles Act by the mother of a minor child aged two years claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 10.4.2005. According to the petitioner, on 10.4.2005, at about 5.00 pm a tempo van bearing registration No.KL-8/F/637 driven by the 2nd respondent along the Choondanai - Kidangoor road in reverse direction in a rash and negligent manner, knocked down the child and as a result of which the child sustained serious injuries.

3. The 1st and 3rd respondents are the owner and insurer of the vehicle respectively. The 2nd respondent is the driver of the offending vehicle. According to the petitioner, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. is Rs.27,51,000/- limited to 15,00,000/-.

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the oral testimonies of PW1 and RW1 and documentary evidence Exts.A1 to A14, and Exts.B1 to B3.

6. After evaluating the evidence on record, the Tribunal found that the accident occurred due to the negligence of the 2nd respondent, awarded a compensation of Rs.12,55,123/- and directed the 3rd respondent/insurer to pay the same. The Tribunal further permitted the 3rd respondent to recover the compensation from the 1st respondent as it found that at the time of the accident, the impugned vehicle had no valid permit.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioner, 1st respondent and 3rd respondent preferred MACA 1499/2015, MACA 1233/2015 & MACA 1282/2015) respectively.

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

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

9. Heard Sri.P.I.Davis, Smt.Anupama Johny and Smt.Raji T.Bhaskar the learned Counsel appearing for the appellants, and Smt.K.Sherin Mohan the learned Standing Counsel for the respondent.

10. <u>The Points:</u> In this case the accident as well as valid insurance policy of the offending vehicle are admitted. As per Ext.A7 wound certificate

and Exts.A8 to A12 discharge summaries, the child sustained the following injuries:

*1. Multiple contused abrasions of lower limb, Pelvis, abdomen.*

*2. Flaccid parapelgia*

*3. Bleeding from urethra*

*4. Splenic laceration*

*5. Fracture right trochanter*

*6. Spinal cord contusion D4 and D5*

*7. Paraplegia*

*8. Neurogeneric bladder*

11. As per Ext.A1 disability certificate issued by the Medical Board the permanent physical disability of the child was assessed as 90%.

12. At the time of arguments, the learned counsel for the 1st respondent would argue that the 2nd respondent who was the driver of the tempo van is none other than the father of the child. He would also argue that even before the accident, as per Ext.B3 document, the offending vehicle was sold to the 2nd respondent. According to him, the Tribunal has not considered the above aspects while disposing of the claim petition. On the other hand, the learned counsel for the 3rd respondent would argue that since the offending vehicle had no fitness certificate at the time of the accident, the Tribunal was not justified in mulcting the liability on them. Therefore, he prayed for exonerating the 3rd respondent. The learned counsel for the petitioner would argue that the compensation awarded by the Tribunal is on the lower side. The

learned counsel for the insurer would further argue that since the victim is a child of two years, the decision of the Hon'ble Supreme Court in **Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Ors. MANU/SC/0878/2013** is to be applied. Therefore, according to him, the Tribunal was not justified in awarding compensation for pain and sufferings, loss of amenities etc.

13. In this case, by applying the dictum in **Master Mallikarjun** (supra), the Tribunal has fixed the loss of disability at a sum of Rs.500000/-. In addition to the same, Rs.150000/- was given for pain and sufferings and Rs.100000/- was awarded for loss of amenities of life. Further, a sum of Rs.300000/- awarded towards future bystander expenses. The amount of compensation payable as per the dictum in **Master Mallikarjun** (supra) is limited. If the above decision is applied, separate compensation could not be awarded for pain and sufferings and loss of amenities. Therefore, the Tribunal was not justified in applying the above decision in this case. Even the above decision provides for applying different yardstick in exceptional circumstances. Since in this case the child suffered 90% permanent physical disability, completely bedridden and requires the assistance of a bystander, it is to be taken as an exceptional case, as the compensation prescribed in **Master Mallikarjun** (supra) will not be able to provide just and reasonable compensation to the petitioner.

14. As per the decision of the Hon'ble Supreme Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd, {2011 (13) SCC 235)**, the notional income of a Coolie during the year 2005 will come to Rs.5000/-. Therefore, the learned counsel for the petitioner prayed for fixing the notional income of the petitioner above that of a coolie during the relevant period. Since the accident in this case was in the year 2005, in the light of the decision of the Hon'ble Supreme Court in **Ramachandrappa** (supra) the notional income of the petitioner is fixed as that of a Coolie at Rs.5000/-. Along with the same, 40% of the income is to be added towards future prospects and the multiplier to be applied is 15. Therefore, the loss of disability will come to Rs.11,34,000/-.

15. Since the child is completely bedridden and suffering from 90% disability he requires the assistance of a bystander. In the decision in **Kajal v. Jagdish Chand and Others, 2020 KHC6114**, the expense of a bystander was fixed by the Apex Court at Rs.5,000/- and the multiplier applied was 18. In the above circumstances, towards bystander expense, the petitioner is entitled to get a compensation of Rs.5000/- per month for a period of 18 years, ie Rs.10,80,000/- (5000 x 12 x 18).

16. Towards the head ‘pain and sufferings’, the Tribunal has awarded Rs.1,50,000/-, and towards 'loss of amenities of life' Rs.1,00,000/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side. Considering the

fact that the child suffered 90% permanent physical disability, completely bedridden and requires the assistance of a bystander, I hold that, towards pain and suffering and loss of amenities of life Rs.5,00,000/- each would be just and reasonable.

17. Towards the head 'Future medical expense' the Tribunal has awarded Rs.1,00,000/-. Since the same appears to be on the lower side, the compensation awarded on the head 'future medical expense' is enhanced to Rs.2,00,000/-, which will carry interest only from the date of the award of the Tribunal.

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

19. Therefore, the petitioner is entitled to get a total compensation of Rs.35,03,123/-, as modified and recalculated above and given in the table below, for easy reference:

| **Sl. No.** | **Head of Claim** | **Amount awarded by Tribunal (in Rs.)** | **Amount Awarded in Appeal (in Rs.)** |
|---|---|---|---|
| 1 | Transport to hospital | 15000 | 15000 |
| 2 | Extra nourishment | 50000 | 50000 |
| 3 | Damage to clothes etc | 1000 | 1000 |
| 4 | Medical expense | 23123 | 23123 |
| 5 | Attendance expenses | 16000 | 1080000 |
| 6 | Pain and sufferings | 1,50,000 | 500000 |
| 7 | Loss of amenities etc. | 1,00,000 | 500000 |
| 8 | Disability | 500000 | 1134000 |
| 9 | Future treatment expense | 100000 | 200000 |

| | | | |
|---|---|---|---|
| 10 | Future attendant expense | 300000 | Included in column 5 |
| | Total | 12,55,123 | **35,03,123** |
| | Enhanced amount | 22,48,000 | |

20. The Tribunal found that the vehicle had no permit at the time of the accident. The Tribunal therefore directed the 3rd respondent to recover the compensation from the 1st respondent, after paying the same to the petitioner. Before this Court also, respondents 1 and 2 have not produced valid permit of the offending vehicle. Therefore, the right of recovery given to the 3rd respondent is liable to be retained. Since there is valid policy the prayer for exoneration cannot be allowed.

21. The learned counsel for the 1st respondent prayed for remanding the matter to the Tribunal so that he will get an opportunity to prove that even before the accident he had sold the vehicle to the 2nd respondent. According to the learned counsel, otherwise, the 1st respondent will lose his right to recover the compensation from the 2nd respondent.

22. In the decision in **Sreekumar v. Abdeen, 2013 (3) KLT 542**, relied upon by the learned counsel, the question that arose for consideration before the learned Single Judge was the inter se dispute between the registered owner and the defacto owner of the offending vehicle and right of the registered owner to recover compensation paid to the injured from the de facto owner in a proceeding initiated by the injured before the Motor Accident Claims Tribunal.

23. In answer to the above question, the learned Single Judge held in paragraph 7 that :

> *"Once it is found that there is a transfer of the vehicle by the registered owner to the de facto owner before the accident, there is no reason why the registered owner should not be given the right to recover the amount (if any realized from him by the claimant) from the de facto owner as provided in S.174 of the Act."*

24. Merely because the vehicle was transferred, it does not mean that the appellant stands absolved of his liability to a 3rd person. So long as his name continues in the RTO records, he remains liable to a 3rd person (**P.P.Mohammed v. K.Rajappan and Ors., 2003 ACJ 1595**).

25. In the decision in **T.V.Thomas v. Chacko P.M and Ors. AIR 2001 SC 3939,** the appellant had sold the vehicle to the 1st respondent, but his name continued in the records of RTO as owner and the accident occurred thereafter. The High Court held that the appellant continued to be the owner and is liable to pay compensation to the LRs of the deceased, since the insurance policy was 'Act only policy'. However, the Apex Court held that the appellant cannot be said to be the owner under the Motor Vehicles Act. It was further held by the Apex Court that the appellant continued to remain liable to 3rd parties as his name continued in the records of RTO as owner. It was also held that the appellant could not escape the liability by merely joining the 1st respondent in the appeal. In the above circumstances, the Apex Court further

held that the appellant being liable can adopt appropriate proceedings against the respondent (subsequent owner), if allowed by law.

26. At the time of arguments, an attempt was made by the learned counsel for the 1st respondent to show that the accident occurred not at a public place but at the compound of the residence of the 2nd respondent. However, on a perusal of Ext.A6 charge-sheet produced in this case it can be seen that at the time of the accident the offending vehicle was taken in reverse direction from the public road. Therefore, I do not find any merits in the argument advanced by the learned counsel for the 1st respondent that the accident occurred not at any public place, but at the compound of the residence of the 2nd respondent.

27. The case of the 1st respondent is that as early as in the year 1999 he has sold the offending vehicle to the 2nd respondent as per Ext.B1 agreement. In this case the accident occurred in the year 2005. At first, when notice was received from the Tribunal in the claim petition, the 1st respondent remained ex parte. Thereafter, the 3rd respondent/insurer filed I.A.3553/2011 calling for respondents 1 and 2 to produce the permit and fitness certificate of the offending vehicle. Though notice was served in the said I.A to respondents 1 and 2 again, they remained absent. Thereafter only in the year 2014 the 2nd respondent filed an application before the Tribunal to set aside the ex parte order and only thereafter he came up with the case that in the year 1999 he had sold the offending vehicle to the 2nd respondent as per Ext.B1 agreement. Even when he finally appeared before the Tribunal to contest the claim petition, he

has not chosen to transfer the ownership from his name to that of the 2nd respondent. In the year 2014 when he was examined as RW1 before the Tribunal, he continued to be the registered owner of the offending vehicle, that is about 14 years after the alleged execution of Ext.B1 agreement. Such a finding by the Tribunal in paragraph 58 of the award is not even challenged in the appeal.

28. At the time of examination before the Tribunal the 1st respondent had no satisfactory explanation as to why he continued to be the registered owner of the offending vehicle. When a question was put to that effect, he replied that on receipt of the notice from the Tribunal he approached the 2nd respondent and he agreed to do the needful. It is also revealed that the 1st respondent was a seasoned driver having experience of about 30 years who know the proceedings to be effected for transferring the ownership of a vehicle. During the cross-examination of RW1 at one stage he happened to admit that he himself was the owner of the offending vehicle at the time of the accident in 2005. It is true that subsequently he changed his version and deposed that he has transferred the ownership in the year 1999. The Tribunal refused to believe the evidence of RW1 for several reasons. One of the reasons is that though he claimed that he had sold the vehicle in the year 1999, he had not changed the ownership before the RTO even in the year 2014. Even at the time of the arguments before this Court also, he has not produced any documents to show that even after 2014 he had changed his name before the

RTO. The 1st respondent has not offered any explanation for not changing the ownership of the vehicle. Even in the memorandum of appeal he has not given any explanation in continuing his name as the insured as well as the registered owner of the offending vehicle. In the memorandum of appeal the only ground taken by him is that at the time of the accident he was not the owner and it was the 2nd respondent who was the owner. At one time he continues to be the insured as well as the registered owner of the vehicle and at the same time he takes a contention that he has sold the vehicle in favour of the 2nd respondent as early as in the year 1999.

29. Though this accident is of the year 2005, even now the claimants could not enjoy the fruits of the Award. At this belated stage, it is not at all just and proper to remand the matter again for giving another opportunity to the 1st respondent to prove that he had already sold the vehicle to the 2nd respondent. Therefore, I do not find any merits in the above argument advanced by the learned counsel for the 1st respondent and as such the said prayer is liable to be rejected. At the same time, I make it clear that as held by the Hon'ble Supreme Court in **T.V.Thomas** (supra), the 1st respondent can proceed against the 2nd respondent, if he is the defacto owner of the offending vehicle, in appropriate proceedings, if allowed by law.

30. In the result, the Appeals filed by the 1st respondent and 3rd respondent (MACA 1233 of 2015 and MACA 1282 of 2015) are dismissed

and the Appeal filed by the petitioner (MACA 1499 of 2015) is allowed as follows:

31. Respondent No.3 is directed to deposit a total sum of Rs.35,03,123/- (Rupees thirty five lakh three thousand one hundred and twenty three only), less the amount already deposited, if any, along with interest @ 8% per annum from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today. Thereafter, the 3rd respondent could recover the compensation from the 1st respondent.

32. On depositing the aforesaid amount, the Tribunal shall disburse 25% of the entire amount, excluding excess court fee payable, if any, to the petitioner, forthwith.

33. The Tribunal is permitted to decide, after considering the welfare, well being and the best interest of the petitioner, whether the balance amount is to be disbursed in full, forthwith or in installments or to be deposited in a Nationalised bank in fixed deposit in the name of the petitioner and to permit withdrawal of interest alone for the time being.

Sd/-

C.Pratheep Kumar, Judge

*Mrcs/21.3.25*