2025:KER:28893

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 4TH DAY OF APRIL 2025 / 14TH CHAITHRA, 1947

MACA NO. 3296 OF 2015

OPMV NO.444 OF 2014 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE

APPELLANT/2ND RESPONDENT

**THE ORIENTAL INSURANCE CO. LTD.
KOZHIKODE, REPRESENTED BY ITS REGIONAL MANAGER,REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.**

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

RESPONDENT/CLAIMANT

**NASEERA T.K.
W/O. MUHAMMED, UCHAKAVIL HOUSE, P.O.PANNIKODE, MUKKAM VIA, KOZHIKODE-673 602.**

**BY ADVS.
SRI.K.M.JAMALUDHEEN
SRI.SHRIKUMAR G. (Sr.)
SMT.LATHA PRABHAKARAN**

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10.3.2025, THE COURT ON 4.4.2025 DELIVERED THE FOLLOWING:

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JUDGMENT

Dated : 4th April, 2025

The 2nd respondent in OP(MV).444/2014 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode, is the appellant. The above OP was filed by the original Petitioner under Sections 140 and 166 of the Motor Vehicles Act claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 17.10.2013. (For the purpose of convenience, the parties are referred to as per their rank before the Tribunal).

2. According to the petitioner on 17.10.2013 at about 7.25 p.m while the minor injured along with the petitioner aged 22, were travelling in a motorcycle, a bus bearing registration No.KL-10-Z-7375 owned and negligently driven by the 1st respondent hit on the motor cycle and as a result of which they fell down and sustained serious injuries. In the accident, the petitioner sustained serious spine injury and the Tribunal found that the functional disability suffered by the petitioner amounts to 100%, which is not under challenge.

3. According to the petitioner, the petitioner was a tailor and a fashion designer earning Rs.12,000/- per month. On the basis of the evidence on record, the Tribunal fixed the notional income of the petitioner at 12,000/-, which is also not seriously disputed by the learned Senior counsel appearing for the appellant.

4. The main arguments advanced by the learned Senior counsel are to the effect that after taking the functional disability of the petitioner as 100% and assessing the loss of disability accordingly, the Tribunal has awarded a sum of

Rs.7,20,000/- on the head 'loss of earning from the date of accident till the appeal period', a sum of Rs.20,79,000/- on the head 'expenses for physiotherapy for life time' (350 x 15 days x 12 months x 33 years), and another Rs.27,72,000/- on the head 'expenses for care by home nurses for life' (7000 x 12 x 33). Further, the Tribunal has awarded a sum of Rs.5,00,000/- each on the heads 'inability to perform marital duties, inability to perform motherly duties to the child and inability to take care of the family as a house wife'. Accordingly, a total sum of Rs.1,16,14,850/- was awarded by the Tribunal which according to the learned Senior counsel is too much on the higher side.

5. Relying upon the decision of the Hon'ble Supreme Court in **Lalan D @ Lal and Another v. Oriental Insurance Company Ltd., 2020 (9) SCC 805**, he would argue that in the above case, to a 34 year old victim of road traffic accident suffering from 100% disability, the Apex Court has awarded only Rs.7,00,000/- as lump-sum compensation for medical attendance charges and future medical treatment and only Rs.3,00,000/- was awarded on the head pain and suffering and only a token amount of Rs.10,000/- was awarded on the head loss of amenities of life.

6. Relying upon the decision of the Hon'ble Supreme Court in **Sidram v. United India Insurance Company Limited and Ors., 2023 (3) SCC 439**, he would argue that in the case of a 19 year old victim of road traffic accident suffering from 100% disability, only Rs.50,000/- was awarded for loss of amenities of life and Rs.3,00,000/- was awarded towards loss of marriage prospects, Rs.1,00,000/- was awarded towards pain and suffering, that in **Atul Thiwari v. Regional Manager,**

Oriental Insurance Company Ltd., 2025 ICO 22, in the case of a victim suffering from 60% permanent disability involved in an accident in the year 2009, the total compensation awarded by the Apex Court was Rs.48,00,000/- and that in **Jithendran v. The New India Assurance Company Limited (2022) 15 SCC 620,** to the victim of a road traffic accident involved in the year 2001 and suffering form 100% functional disability, the total compensation awarded was only Rs.27,67,800/-. He would further argue that, though in the decision in **Benson George v. Reliance General Insurance Co.Ltd and Another, (2022) 13 SCC 142,** the Apex Court has awarded Rs.10,00,000/- each on the heads pain and suffering and loss of amenities, the said judgment was passed by the Apex Court invoking its power under Article 142 of the Constitution of India and as such it cannot be taken as a precedent by this Court.

7. On the other hand, the learned counsel for the petitioner would argue that the decision in **Benson George** (supra) is not one passed by the Apex Court by invoking the power under Article 142 of the Constitution of India, but under Article 141 and as such, it is binding on this Court.

On a perusal of the above decision, it can be seen that after evaluating the facts in the case, the Apex Court in paragraph 7 held that :

> *7. Considering the prolonged hospitalization and medical treatment and that the claimant underwent multiple surgeries, we are of the opinion that the High Court has erred in awarding Rs.2,00,000/ only under the head pain and suffering. The pain, suffering and trauma suffered by the claimant cannot be compensated in terms of the money. However, still it will be a solace to award suitable compensation under different heads including the pain, shock and suffering, loss of amenities and happiness of life.*

7.1 In the facts and circumstances of the case due to the prolonged hospitalization and the multiple brain injuries/injuries sustained by the claimant and that he is still in coma and is bedridden, we are of the opinion that if the amount of compensation under the head of pain, shock and suffering is enhanced to Rs.10,00,000/- (Rupees Ten Lakhs), it can be said to be a reasonable amount under the head pain, shock and suffering.

7.2 Similarly, the amount of Rs.1,00,000/- awarded by the High Court under the head loss of amenities and happiness can also be said to be on lower side. As observed hereinabove no amount can compensate the loss of amenities and happiness more particularly a person who is in coma since number of years and is bedridden for the entire life."

8. From the above judgment of the Hon'ble Apex Court it can be seen that valid reasons were given by the Apex Court for enhancing the compensation awarded by the High Court on the heads 'pain and suffering' and 'loss of amenities' and it is not an order passed by invoking the power under Article 142, but it is an order passed under Article 141 of the Constitution of India.

9. In the decision in **Sidram** (supra) by relying upon the decision in *Raj Kumar v. Ajay Kumar and Another, (2011) 1 SCC 343)*, the Apex Court reiterated a general principles relating to compensation in injury cases, in paragraph 40 as follows :-

"In the case of Raj Kumar (supra) this Court has explained in the following terms the general principles relating to compensation in injury cases and assessment of future loss of earnings due to permanent disability:

General principles relating to compensation in injury cases

5. *The provision of the Motor Vehicles Act, 1988("the Act", for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable*

manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See C.K. Subramania Iyer v. T. Kunhikuttan Nair[(1969) 3 SCC 64 : AIR 1970 SC 376] , R.D. Hattangadi v. Pest Control (India) (P) Ltd.[(1995) 1 SCC 551 : 1995 SCC (Cri) 250] and Baker v. Willoughby [1970 AC 467 : (1970) 2 WLR 50 : (1969) 3 All ER 1528 (HL)] .]

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

10. In the instant case, since the petitioner was aged 22 on the date of the accident, only 40% of the income could be added towards future prospects and the multiplier to be applied is 18. Accordingly, the loss of disability will come to

Rs.36,28,800/-. Therefore, the Tribunal was not justified in adding 50% of the income towards future prospects.

11. Since the functional disability of the petitioner was taken as 100% and the loss of disability was assessed as such, the Tribunal was not justified in awarding a further sum of Rs.7,20,000/- from the date of accident till the appeal period. Therefore, Rs.7,20,000/- awarded on the head 'loss of earning from the date of accident till the appeal period' will be deducted.

12. Since the petitioner was aged 22 on the date of the accident as per the decision in **Sarla Verma v. Delhi Transport Corporation,** (2009) 6 SCC 121 the multiplier applicable is only 18 and as such, the Tribunal was not justified in applying the multiplier 33. Therefore, the compensation awarded on the head 'expenses for care by home nurse for life' at the rate of Rs.7,000/- for 33 years will be limited to 18 years, ie, Rs.15,12,000/-(7000x12x18). As I have already noted above, in the accident, the petitioner, a 22 year old woman and a mother of 1 1/2 year old child suffered very serious injuries and she suffered 100% functional disability. Ever since the accident she is in the bed unable to move from there without the assistance of a bystander.

13. In the impugned award, the Tribunal specifically noted that even now the petitioner is unable to move from the bed and is confined to bed and requires the service of another even to discharge her daily primary needs. In the accident, she sustained A Grade spine injury and it was on the basis of such condition, her functional disability was fixed by the Tribunal at 100%.

14. In the decision in **Kajal** (supra) in a similar instance in the case of a 12 year old girl suffering from 100% disability and in paraplegia condition, the Apex Court has awarded an expense of two bystanders at the rate of Rs.5,000/- each per month for a period of 18 years. In the instant case also the victim is a lady and she requires the assistance of another person for anything and everything including her primary needs. In the above circumstances in this case the petitioner is entitled to get the expense of two bystanders. It is true that the petitioner has not produced any documents or additional evidence to prove the expense met with her towards bystander expense. In the above circumstances, I hold that towards bystander expense, the petitioner is entitled to get Rs.10,000/- per month, as in **Kajal** (supra) for a period of 18 years which will come to Rs.10,000 x 12 x 18 = 21,60,000/-.

15. Towards the head 'expense for physiotherapy for life time' the Tribunal has awarded a sum of Rs.20,79,000/- calculating the amount at the rate of Rs.350/- in alternate days for a period of 33 years. As argued by the learned counsel for the 3rd respondent, the compensation awarded on the above head is too much on the higher side and I hold that Rs.350/- each twice in a week for a period of 18 years will be a reasonable compensation on the head 'expenses for physiotherapy for life time', which will come to Rs.6,04,800/- (350 x 8 x 12 x 18).

16. The learned counsel for the petitioner would argue that the compensation awarded by the Tribunal on the heads pain and suffering and loss of amenities namely Rs.2,00,000/- and Rs.1,00,000/- respectively is too meagre when compared to the sufferings of the petitioner.

17. As argued by the learned Senior counsel, in the decision in **Raj Kumar v. Ajay Kumar and Another, (2011) 1 SCC 343),** the Hon'ble Apex Court has awarded Rs.1,00,000/- towards pain and suffering and Rs.50,000/- alone was awarded on the head 'loss of amenities'. In the decision in **Kajal v. Jagdish Chand and Others, 2020 KHC 6114**, to a 12 year old girl suffering from 100% disability a sum of Rs.15,00,000/- was awarded by the Apex Court towards pain and suffering and loss of amenities. In the decision in **Benson George** (supra) a sum of Rs.10,00,000/- each was awarded towards pain and suffering and loss of amenities to a victim in coma stage. While considering the quantum of compensation to be awarded on the heads pain and suffering and loss of amenities, the facts of each case are to be considered separately and distinctly.

18. In the instant case, considering the fact that the petitioner was only 22 years at the time of the accident and she was a mother of 1 1/2 year old child and because of the injury sustained in the accident, she lost her entire life and has to remain in the bed during the rest of her life, I hold that towards pain and suffering and loss of amenities a total sum of Rs.15,00,000/- will be a reasonable compensation.

19. The Tribunal has awarded Rs.5,00,000/- each on the head 'inability to perform marital duties', 'inability to perform motherly duties to the child' and 'inability to take care of the family as a house wife'. Considering the fact that because of the injuries sustained in the accident, the petitioner lost her capacity to enjoy marital life, Rs.5,00,000/- awarded on the above head 'inability to perform marital duties' is sustained while the compensation awarded on the heads 'inability to

perform motherly duties' and 'inability to take care of the family as a house wife' are liable to be deducted.

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

21. Therefore, the petitioner is entitled to get a total compensation of Rs.1,02,61,450/-, as modified and recalculated above and given in the table below, for easy reference:

Heads	Amount awarded by the Tribunal	Amount given in Appeal
Transport to hospital	15000	15000
Loss of earnings from the date of accident till the appeal period	720000	nil
Hospitalization for 80 days as per Ext.A4 to 9 and X1 to X2	64000	64000
Medical expense as per A21 and 22	1,76,850	1,76,850
Future treatment	1,00,000	1,00,000
Pain and sufferings & loss of amenities	200000 100000	15,00,000 (for both pain and sufferings & loss of amenities)
Loss of income due to functional disability assessed at 100%	38,88,000	36,28,800
Expenses for physiotherapy for life time	20,79,000	6,04,800
Expenses for care by home nurse for life	27,72,000	15,12,000
Inability to perform marital duties	500000	5,00,000
Inability to perform motherly duties to the child	500000	Nil
Inability to take care of the family as a house wife	500000	Nil
Bystander expense	Nil	21,60,000
Total	11614850 rounded to 11614850	1,02,61,450
Amount reduced	13,53,400	

22. In the result, this Appeal is allowed in part, and Respondent No.2 is directed to deposit a total sum of Rs.1,02,61,450/- (Rupees one crore two lakh sixty one thousand four hundred and fifty only), less the amount already deposited, if any,

along with interest rate as ordered by the Tribunal from the date of the petition till deposit/realisation, within a period of two months from today.

On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioner, excluding court fee payable, if any, without delay, as per rules.

Sd/- **C.Pratheep Kumar, Judge**

Mrcs/17.3.