



R.S.A.588/2011

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2026:KER:65532

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 21ST DAY OF AUGUST 2026 / 30TH SRAVANA, 1948RSA NO. 588 OF 2011

AGAINST THE JUDGMENT DATED 24.07.2010 IN AS NO.10 OF 2007 OF
DISTRICT COURT, WAYANAD IN OS NO.41 OF 2002 OF SUBORDINATE JUDGE'S COURT,
SULTHANBATHERY

APPELLANTS/APPELLANTS IN A.S/DEFENDANTS IN O.S.:

- 1 WILDLIFE WARDEN, KURICHIYADU RANGE,
CHETHALAYAM, KIDANGANADU AMSOM DESOM,, SULTHANBATHERY.
- 2 RANGE OFFICER, CHETHALAYAM RANGE
KIDANGANADU AMSOM DESOM, SULTHANBATHERY.
- 3 WAYANAD DIVISIONAL FOREST OFFICER,
KALPATTA AMSOM DESOM.
- 4 STATE OF KERALA, REP.BY DISTRICT
COLLECTOR, WAYANAD, KALPETTA.
- 5 FOREST CONSERVATOR, KERALA STATE,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.KANNAN M. NAIR

RESPONDENTS/RESPONDENTS IN A.S./PLAINTIFFS IN O.S.:

- 1 THADATHIL SARAMMA,
W/O. SCARIA, KUNNATHUKAVALA,PULPALLY AMSOM,DESOM,,
SULTHANBATHERY TALUK. 673 592 (DIED LRS RECORDED)
- 2 THADATHIL RAJI, S/O.THADATHIL SARAMMA
KUNNATHUKAVALA,DO DO.
- 3 THADATHIL BENNY
S/O.THADATHIL SARAMMA,DO.



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- 4 THADATHIL JOY
S/O.THADATHIL SARAMMA,DO.
- 5 THADATHIL SHYJU
S/O.THADATHIL SARAMMA,DO.
- 6 THADATHIL BYJU
S/O.THADATHIL SARAMMA,DO.
- 7 THADATHIL BIJU
S/O.THADATHIL SARAMMA,DO.
- 8 THADATHIL AASA
D/O.THADATHIL SARAMMA,DO.

RESPONDENTS 2 TO 8 ARE RECORDED AS LRS OF DECEASED R1 AS
PER THE ORDER DATED 25.09.13 IN MEMO DATED 9/9/13 VIDE CF
6220/13.

BY ADVS.
SHRI.P.V.ANOOP- R2 TO T8
SRI.K.V.SREERAJ- R2 TO T8

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
11.08.2026, THE COURT ON 21.08.2026 DELIVERED THE FOLLOWING:

**C.R.****MOHAMMED NIAS C.P., J.**

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R.S.A. No. 588 of 2011

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Dated this the 21st day of August, 2026**JUDGMENT**

The appellants herein are the defendants in a suit for damages, O.S. No.41/2002, before the Sub Court, Sulthan Bathery, and the appellants in A.S. No.10/2007 before the District Court, Wayanad, challenging the concurrent findings against them.

2. The first respondent/plaintiff is the wife, and the other respondents/plaintiffs are the children of deceased Scaria, who died due to a wild elephant attack at about 10.30 p.m. on 27.04.2001 at Chamappara Panchayat Road. According to them, this happened due to the negligence and carelessness of the officers of the Forest Department. They contended that they were fully dependent on the income of the said deceased, it caused mental agony, and there is no one to look after them. After filing several petitions, the Forest Department of the Kerala Government had



given Rs.20,000/- to the plaintiffs/respondents as compensation. They issued a lawyer's notice on 24.01.2002 to the appellants demanding compensation of Rs.2,00,000/- and since they received Rs. 20,000/-, the compensation claim was limited to Rs. 1,80,000/- while filing the suit.

3. The defendants contended that the incident occurred at Vandikkadavu- Kolavally road, a forest road, and that the deceased was intoxicated at that time, and the incident happened due to the carelessness and negligence of the deceased. The defendants have taken sufficient precautionary measures to prevent wild animals from entering the private properties. They further contended that all the plaintiffs had their own occupation and income and were not dependent on the deceased. They contended that the compensation claimed by the plaintiffs is exorbitant and unreasonable.

4. The trial court framed issues as to whether the death of Scaria caused by the attack of a wild elephant was on account of the negligence of the Forest Department of the State, whether the compensation allowed by the 4th defendant to the plaintiff is insufficient, and whether the plaintiffs are entitled to additional compensation and if so, what should be the



quantum.

5. On behalf of the plaintiff, PWs 1 and 2 were examined, and Ext A1 to A6 were marked. DW1 was examined, and Ext B1 and B2 were marked on behalf of the defendants.

6. The trial court found that there was nothing on record to show that the incident occurred on the forest road. In fact, there are houses near the scene of occurrence. Thus, it is clear that the incident happened on the Panchayat Road as contended by the plaintiffs. It was further found that the negligence of the forest department caused the death of Scaria, as it is clearly evident from the fact that the defendants had not installed power fencing lines and trenches along the forest boundary to prevent the wild animals from leaving the forest and entering the private property.

7. The trial court further found that, considering the age of the deceased and that he was a healthy man, the compensation allowed by the fourth defendant is insufficient, and the plaintiffs are entitled to get additional compensation. The trial court found that the deceased can earn Rs.75/- per day and, by deducting Rs.25/- as his personal expenses, the dependents will get Rs.50/- per day. If so, the dependents will get



Rs.18,000/- per year, and applied multiplier 11 and assessed Rs.1,98,000/- as compensation. Out of that, the amount already given, Rs.20,000/- was deducted, and the balance amount Rs.1,78,000/- with proportionate interest was ordered, and also found that it is the liability of the Government and Forest Department to pay the compensation.

8. Aggrieved by the Judgment and decree of the trial court, appellants filed A.S No. 10/2007 before the District Court, Wayanad. The District Court also found that the available evidence shows that the incident occurred not on the forest road or the area within the forest limit, but on the grama panchayat road and near the road dwelling houses. It was further found that the incident could have been avoided if precautionary measures were taken by the forest department and its officers by installing power fencing lines and trenches along the forest boundary. It was further found that the amount assessed by the trial court is reasonable and not excessive. Thus, the District Court dismissed the appeal, and the findings of the trial court were upheld. Aggrieved by this, the second appeal is filed.

9. The appellants framed the following questions of law as substantial questions of law in the memorandum of second appeal:-



i. Whether the courts below are justified in granting compensation to the respondents, ignoring the Kerala Rules for Payment of Compensation to Victims of Attack by Wild Animals, 1980?

ii. Whether the courts below are justified in fastening a tortious liability on the appellants, in the case on hand where the wild Elephant is not under the control of the officers of the Forest Department?

10. The appellants argued that the State cannot be held as a keeper of the wild animals. The Government is required to protect the forest and wildlife under the Directive Principles of State Policy and at the same time, every citizen has a constitutional duty to protect forest and wildlife under the Constitution of India. Walking through the forest road during the night under intoxication can only be due to negligence and total disregard of the duty cast on the citizen. The incident occurred due to the negligence of the deceased, for which the State cannot be held liable.

11. They further submitted that the incident occurred on the forest road, and a person residing near the forest is expected to be familiar with the behaviour of the wild animals. The deceased walked through the forest road negligently, and there is no pleading or evidence that the deceased



died due to improper exercise or abuse of power by a government servant, to make the employer liable. They further argued that non-installation of power fencing or trenches along the forest boundary cannot be a reason to hold that the appellants are negligent or liable to pay compensation.

12. It is also argued that the compensation awarded by the trial court is excessive and the Court below ignored the Kerala Rules for Payment of Compensation to Victims of Attack by Wild Animals, 1980, under which the amount of compensation was Rs.20,000/- at the relevant time, and that amount was already paid.

13. Heard the learned Government pleader for the appellants.

14. A few admitted facts are to be noticed. It is not in dispute that the predecessor-in-interest of the respondents died on 27.04.2001 in an attack by a wild elephant. It was the specific case of the appellants that the incident took place on a panchayat road, when the deceased was walking through the said road. Both courts have concurrently rejected the contention of the appellants that he was walking through a forest. There is nothing on record to discredit the factual findings of the trial Court, which accepted the contention of the respondents herein. No material has been



produced by the appellants to even suggest that the deceased was walking through a forest.

15. As regards the liability/responsibility of the appellants for the incident that happened, it is to be noted that reserve forests are undoubtedly the property of the State. The State has a duty to protect the wildlife. Article 48-A of Part IV of the Constitution of India, under the Directive Principles of State Policy, envisages that the State shall endeavour to protect and safeguard the wildlife of the Country. The object of Wild life (Protection) Act, 1972, as seen from the Preamble of the Act itself, shows that the Act is to provide for the protection of wild animals, birds and plants and for matters connected therewith ancillary or incidentally thereto with a view of ensuring the ecological and environmental security of the country. The State is deemed the owner and custodian of the wildlife.

16. The State also has the constitutionally mandated responsibility to protect the fundamental rights of the citizens. Thus, it is necessary to maintain a balance between the protection of citizens' fundamental rights and the duty of the State to safeguard wildlife. The State has the duty to



take due care to avoid human-wildlife conflict. State has to take adequate measures to ensure that wild animals do not trespass into human habitations or agricultural properties. Therefore, it is reasonable to assert that if wild animals, being the property of the Government, cause harm to any citizen or farmers, it is the Government's duty to take responsibility for the loss, and this, in fact, is a failure of the State Government to protect the right to life guaranteed under Article 21 of the Constitution of India. Citizens are entitled to claim compensation for any damage caused by wild animals, whether or not such claims are specifically mentioned in existing Government Orders, schemes, or provisions.

17. This Court in the decision in **State of Kerala and Ors. v. V.V. George [2017 (3) KHC 882]** and **M.A. Stephen v. State of Kerala and Ors. [MANU/KE/1509/2025]** held that the State has a duty to ensure that wild animals do not trespass into human habitations or agricultural properties, and it is also incumbent upon the State to install appropriate fencing around reserve forests, making it difficult for wild animals to enter and wander into private properties located near forest areas. Here, it is evident that the place of occurrence is a Panchayat road and no forest fencing was



installed, or trenches were made along the forest boundary to prevent wild animals from entering the private property. Thus, there is a breach of duty on the part of the State. The contention of the appellants that the wild Elephant is not under the control of the officers of the Forest Department does not absolve the State from its liability. If precautionary measures were taken by the Forest Department, the incident could have been avoided.

18. Even in the absence of negligence on the part of the State, it would be liable, as the liability is strict. Applying the principle of Strict liability, as the State is the deemed owner of wild animals, they will be liable for the injury or damage caused by the wild animal attack, as rightly found by this court in **The State of Kerala and Ors. v. V. V. George** (supra), that in the case of attack by wild animals, the liability on the part of the State and its officers is based on the doctrine of strict liability.

19. The quantum of damages was fixed taking the daily income of the deceased as Rs.75/- per day and, by deducting Rs.25/- as his personal expenses, the dependents will get Rs.50/- per day. If so, the dependents will get Rs.18,000/- per year, and applying a multiplier of 11, Rs.1,98,000/- was assessed as compensation. By no standards can the same be treated as



exaggerated. As regards the contention based on the Kerala Rules for Payment of Compensation to Victims of Attack by Wild Animals, 1980, it is relevant to note that the said Rules prescribe the quantum and procedure for payment of compensation to victims of wild animal attack. It is formulated for expeditious ex gratia relief. However, the existence of such a welfare scheme cannot be construed as the sole and exclusive remedy available to a citizen who suffers loss of life or injury due to attacks by wild animals. The right to claim just and adequate compensation for such loss of life or injury is traceable to Article 21 of the Constitution and to the common law principle of strict liability. These are substantive rights which exist independent of any executive scheme. The quantum prescribed in the 1980 Rules is only the minimum payable by the State as ex gratia. It cannot fetter the power of the courts to determine or enhance the compensation to make it reasonable with the actual loss, pain and suffering of the claimant. Accordingly, the trial court was well within its jurisdiction to assess the damages and to award compensation higher than that provided under the Rules. The existence of the Rules only provides a floor. The courts are duty-bound to ensure that the compensation awarded is just, fair and



reasonable and commensurate with the nature and extent of the injury suffered. The compensation must reflect the true value of the loss occasioned, for the worth of a human life cannot be reduced to a figure that fails to adequately recognise the magnitude of the loss.

Though the appellants have framed the above-referred substantial questions of law, they do not arise for consideration in this appeal, much less warrant interference under Section 100 of the Code of Civil Procedure.

The Regular Second Appeal fails and is hereby dismissed.

Sd/-

**MOHAMMED NIAS C.P.
JUDGE**

okb/

Judgment reserved	11-8-26
Date of Judgment	21-8-26
Judgment dictated	12-8-26
Draft judgment placed	20-8-26
Judgment corrected	20-8-26
Final judgment uploaded	21-8-26