

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 25TH DAY OF AUGUST 2021 / 3RD BHADRA, 1943

MACA NO. 1768 OF 2021

AGAINST THE JUDGMENT IN OPMV 1795/2018 OF ADDL.MOTOR ACCIDENT CLAIMS
TRIBUNAL , ERNAKULAM

APPELLANT/2ND RESPONDENT IN THE O.P(MV)

THE UNITED INDIA INSURANCE CO.LTD.

T.P. CELL, JOS TRUST BUILDING, CHITTOOR ROAD, KOCHI 682 035,
REPRESENTED BY THE MANAGER, REGIONAL OFFICE, UNITED INDIA
INSURANCE CO.LTD., HOSPITAL ROAD, ERNAKULAM 682 011.

BY ADV DEEPA GEORGE

RESPONDENTS/PETITIONERS 1 TO 4 IN THE O.P (MV) :

- 1 SHALUMOL,
AGED 28 YEARS
D/O. LATE ARAVINDAKSHAN, DEVI NILAYAM, THYKKATTUSSERY P.O.
ALAPPUZHA 680 306.
- 2 MALUMOL,
AGED 25 YEARS,
D/O. LATE ARAVINDAKSHAN, DEVI NILAYAM, THYKKATTUSSERY P.O.
ALAPPUZHA 680 306.
- 3 THANKAMMA,
AGED 71 YEARS
M/O. LATE SREEDEVI, CHATHANKARY, KAINADI P.O.
ALAPPUZHA 686 534.
- 4 NARAYANAN KUTTAPPAN,
AGED 74 YEARS
F/O. OF LATE SREEDEVI,
CHATHANKARY, KAINADI P.O. ALAPPUZHA 686 534.

BY ADV.MATHEWS K.PHILIP

ADV.SMT.MANASY.T.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
25.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.S DIAS,J.

MACA No.1768 of 2021

Dated this the 25th August, 2021.

JUDGMENT

It is said; “accidents do happen, unfortunately, it happens at the worst time”. Shalumol and Malumol, while in the worst time of their lives, due to the untimely demise of their father, have tragically lost their mother too in an accident.

2. On 09.06.2018, while Sreedevi was on her way to work, she was mowed down to death by a vehicle. Shalumol and Malumol and their maternal grandparents, the respondents in the appeal, moved the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for brevity referred to as ‘Act, 1988’) claiming compensation from the insured and the insurer of the vehicle. They averred in the claim petition that the accident occurred due to the negligence of the driver cum owner (the 1st respondent before the Tribunal) of a goods vehicle bearing registration No.KL-43/G-3561. The vehicle was insured with the appellant. Sreedevi was 49 years of age, on the date of her death. She was an anganwadi worker and earning a monthly

honorarium of Rs.18,000/-. She was the breadwinner of the family. The respondents were dependent on her. The respondents lost the love, affection, happiness, consortium and pecuniary benefits that Sreedevi provided. Hence, they claimed an amount of Rs.20,00,000/- as compensation from the appellant.

3. The respondents before the Tribunal — the driver cum owner of the vehicle and the appellant — resisted the claim petition. The driver cum owner contended that, as his vehicle was insured with the appellant, the insurer was liable to indemnify him. The appellant admitted the insurance coverage of the vehicle, but disputed the age, income and occupation of Sreedevi. The appellant also contended that the accident occurred due to the negligence of Sreedevi and the respondents were not the legal representatives and dependants of Sreedevi.

4. The respondents marked Exhibits A1 to A6 in evidence. The appellant did not let in any evidence.

5. The Tribunal allowed the claim petition, by holding that the respondents were the legal representatives and dependants of Sreedevi, and permitted the respondents to realise an

amount of Rs.17,32,680/- with interest and costs from the appellant.

6. Aggrieved by the impugned award, the insurer is in appeal. The appellant has not impleaded the driver cum owner as a party in the appeal.

7. Heard; Smt.Deepa George, the learned counsel for the appellant/insurer, Smt.Manasy.T, the learned counsel for the respondents/petitioners and Smt.Latha Susan Cherian, the learned Amicus Curiae.

8. Smt.Deepa George argued that the finding of the Tribunal that the respondents 1, 3 and 4 – the married daughter and parents of Sreedevi – were dependent on Sreedevi is erroneous, and only the 2nd respondent, the unmarried daughter of Sreedevi, was dependent on her. So, the Tribunal ought to have awarded compensation for loss of dependency only for the 2nd respondent, that too after deducting one half of the compensation towards the personal living expenses of the deceased as held by the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation** [(2009) 6 SCC 121] and **National Insurance Company Ltd. v. Pranay Sethi** [(2017) 16 SCC 680]. She also placed reliance on the decisions

of the Honourable Supreme Court in **Amrit Bhanu Shali & Anr v. National Insurance Company Ltd. & Ors** [(2012) 11 SCC 738] and **Manjuri Bera v. Oriental Insurance Company Ltd. and another** [(2007) 10 SCC 643] and the decisions of this Court in **Sujatha P and others v. Oriental Insurance Company Ltd.** [2017 (5) KHC 568], **Thressiamma v. State Expresss Transport Corporation (TN) Ltd.** [2016 KHC 24], **Joseph v. Giji Varghese** [2009 KHC 1076] to fortify her contention that in a claim under Section 166 of the Act, it is imperative for the claimants to plead and prove that they were the dependents of the deceased.

9. Smt.Manasy.T countered the above submissions by contending that, after Sreedevi lost her husband, her septuagenarian parents started living with her and her two daughters. Sreedevi was the sole breadwinner of the family and had been maintaining all the respondents. Exhibit A-4 proves that the respondents were dependent on Sreedevi. For the sole reason that the 1st respondent was recently married, her entitlement to compensation for loss of dependency cannot be denied. There is no error or illegality in the impugned award; hence the appeal may be dismissed.

10. On a consideration of the rival contentions, the following questions emerge for consideration in the appeal.

(i) Is dependency a relevant criterion in a claim petition filed under the Motor Vehicles Act, 1988?

(ii) Should a dependent be a legal representative of the deceased to claim compensation under Section 166 of the Motor Vehicles Act, 1988?

(iii) Are parents and married daughters entitled to claim compensation under Section 166 of the Motor Vehicles Act, 1988, as dependents of the deceased?

Questions (i) and (ii)

11. On tracing the legislative history relating to claims for compensation for actionable wrongs, it is seen by Act 13 of 1855, the Fatal Accidents Act, 1855 was brought into force on 27.03.1855.

Section 1 A of the Act, reads as follows:

“1A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong. – Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and

shall be brought by and in the name of the executor, administrator or representative of the person deceased;

and in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court by its judgment or decree shall direct."

(emphasis added)

12. By Act 4 of 1939, the Motor Vehicles Act, 1939, (in short, 'Act, 1939') was enacted, to consolidate and amend the law relating to motor vehicles. Section 110 A of the Act reads thus:

"110-A. Application for compensation.--(1) An application for compensation arising out of an accident in the nature specified in sub-section (1) of section 110 may be made--
(a) by the person who has sustained the injury; or (aa) by the owner of the property; or

(b) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
(c) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

Provided that, where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(emphasis added)

13. The expression 'legal representative' was not defined in the Act, 1939.

14. Even though the Law Commission of India had recommended in its 85th report that it would be appropriate to define the expression 'legal representative' as in Section 1A of the Fatal Accidents Act, 1855, the Parliament declined to take any action on the recommendation; giving a clear indication that the Parliament desired to give the expression 'legal representatives' a broader meaning and not confine it to the spouse, parent and children of the deceased as defined in the Fatal Accidents, 1855.

15. The cleavage of opinion among the High Courts' regarding the maintainability of an application under Section 110 A by legal representatives was put to rest by the Honourable Supreme Court in **Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai & another** [(1987) 3 SCC 234] wherein it was held as follows:

“11. Clauses (b) and (c) of sub-section (1) of [Section 110-A](#) of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of [Section 110-A](#) provides that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The

expression 'legal representative' has not been defined in the Act. Section 2 (11) of the Code of Civil Procedure, 1908 defines 'legal representative' as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the persons or person who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act. This section in a way is a substitute to the extent indicated above for the provisions of section 1A of the Fatal Accidents Act, 1855 which provides that "every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased." **While the Fatal Accidents Act, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased, section 110-A(1) of the Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from section 110-B of the Act that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation**

shall be paid. This provision takes the place of the third paragraph of section 1A of the Fatal Accidents Act, 1855 which provides that in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be 'brought. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by section 110-A and section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.

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"13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known principles of law. **We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of**

the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents xxx xxx xxx”

(emphasis added)

16. By Act 59 of 1988, The Motor Vehicles Act, 1988, was brought into force on 14.10.1988, and Act, 1939 was repealed. Section 166 of the Act, 1988, which is the corresponding provision to Section 110 A of the Act, 1939, provides who can file an application under the Act and reads as follows:

“Section 166. Application for compensation.

(1) An application for compensation arising out of an accident of the nature specified in subsection (1) of [Section 165](#) may be made

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

xxx xxx xxx xxx”.

17. On juxtaposition of Section 110 A of Act, 1939 with Section 166 of Act, 1988, no perceivable difference is seen.

18. Sub Section (1) of Section 168 of the Motor Vehicles Act, 1988, contemplates the manner in which an award has to be passed, which is extracted below for convenience:

Section 168 Award of the Claims Tribunal.—(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, **subject to the provisions Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid** and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

19. The Law Commission of India again in its 149th report dated 11.02.1994, on the subject 'Removal of certain deficiencies in the Motor Vehicles Act, 1988', recommended that it would be appropriate if the definition of 'dependant' is identical under the three enactments namely, the Fatal Accidents Act, 1855, Railways Act, 1989 and Motor Vehicles Act, 1988. Nonetheless, no action has been taken on the above recommendation, although the Act, 1988, was subsequently extensively amended on several occasions.

20. The Government of Kerala by SRO No.1286/1989, promulgated the Kerala Motor Vehicles Rules, 1989, (in short, 'Kerala Rules, 1989'), which came into force on 25.07.1989. Rule 2 (k) defines the expression 'legal representative, which reads thus:

“(k) Legal representative” means a person who in law is entitled to inherit the estate of the deceased if he had left any

estate at the time of his death and also includes any legal heir of the deceased and the executor or administrator of the estate of the deceased;"

21. Therefore, as far as the State of Kerala is concerned, the expression 'legal representative' is defined.

22. Then what is the relevance of dependency in a claim petition under Section 166 of the Motor Vehicles Act, 1988?

23. The concept of dependency relates back to English Fatal Accidents and Law Reform Act, but the expressions 'dependent' or 'dependency' are not defined in either Act, 1939 or Act, 1988.

24. In *Gobald Motor Service Limited & Anr. v. R M K Veluswami & Ors.* [AIR 1962 (SC) 1], a three Judge Bench of the Honourable Supreme Court, in one of earliest decisions on how pecuniary loss to a dependent has to be assessed under Section 1 A the Fatal Accidents Act, 1855, held thus:

"7. xxx xxx xxx This section is in substance a reproduction of the English Fatal Accidents Act, 9 and 10 Vict. ch. 93, known as the Lord Campbell's Acts. The scope of the corresponding provisions of the English Fatal Accidents Act has been discussed by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.* ([1942] A.C. 601). There, Lord Russell of Killowen stated the general rule at p. 606 thus:

"The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Act is well settled, namely, that any benefit accruing to a dependent by reason of the relevant death must be taken into account. Under those Acts the balance

of loss and gain to a dependent by the death must be ascertained, the position of each dependent being considered separately."

Lord Wright elaborated the theme further thus at p. 611:

"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered..... The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

The same principle was restated with force and clarity by Viscount Simon in *Nance v. British Columbia Electric Railway Company Ltd.* ([1951] A.C 601). There, the learned Lord was considering the analogous provisions of the British Columbia legislation, and he put the principle thus at p. 614:

"The claim for damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family?"

(emphasis added)

25. Following the above principles, commonly known as the 'Nance' and 'Davies' methods, the Tribunals and Courts determined compensation under the Acts of 1939 and 1988, for loss of dependency.

26. Expressing grave concern in the lack of uniformity and consistency in awarding compensation, the Honourable Supreme Court in *Sarla Verma (supra)*, after referring to **Kerala**

State Road Transport Corporation v. Susamma Thomas [(1994 (2) SCC 176] and **UP State Road Transport Corporation v. Trilok Chandra** [1996 (4) SCC 362], held as follows:

“18. Basically only three facts need to be established by the claimants for assessing compensation in the case of death:

(a) age of the deceased;

(b) income of the deceased; and

(c) the number of dependents.

The issues to be determined by the Tribunal to arrive at the loss of dependency are: (i) additions/deductions to be made for arriving at the income;

(ii) the deduction to be made towards the personal living expenses of the deceased; and

(iii) the multiplier to be applied with reference of the age of the deceased.

If these determinants are standardized, there will be uniformity and consistency in the decisions. There will be lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay.

19. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following-well settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined.

Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family.

27. Subsequently, a three Judge Bench of the Honourable Supreme Court in **Reshma Kumari and others v. Madan Mohan and another** [(2013) 9 SCC 65] after extracting paragraphs 30, 31 and 32 of Sarla Verma, accepted the view in Sarla Verma by stating as follows:

“41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man’s net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

42. In our view, the standards fixed by this Court in Sarla Verma on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out.

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43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in Sarla Verma subject to the observations made by us in para 41 above.”

28. Later, due to divergent views in Reshma Kumari (supra), **Rajesh and others v. Rajbir Singh and others** [(2013) 9 SCC 54] and **National Insurance Company Ltd. v. Pushpa and others** [(2015) 9 SCC 166] the Constitutional Bench of the Honourable Supreme Court in **National**

Insurance Company Limited v. Pranay Sethi and others

[(2017) 16 SCC 680] approved Reshma Kumari by holding as follows:

“41. On a perusal of the analysis made in Sarla Verma which has been reconsidered in Reshma Kumari, we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by conclusion 43.6 of Reshma Kumari. We concur with the same as we have no hesitation in approving the method provided therein.”

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44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, **it has to be accepted on the basis of income established by the legal representatives of the deceased.** Future prospects are to be added to the sum on the percentage basis and “income” means actual income less than the tax paid. The multiplier has already been fixed in Sarla Verma which has been approved in Reshma Kumari with which we concur.”

29. In the light of the declaration of law in **Pranay Sethi** (supra), the Tribunals and Courts are bound to determine the following matters, before passing an award in a claim petition filed under Section 166 of Act, 1988, i.e., (i) age of the deceased (ii) income of the deceased (iii) the number of dependents (iv) additions/deductions to be made for arriving at the income (v) the deduction to be made towards the personal living expenses of the deceased; (vi) the multiplier to be applied with reference of the age of the deceased (vii) multiply the annual contribution to the family (multiplicand) with such

multiplier to get the 'loss of dependency' (viii) quantify the other pecuniary, non-pecuniary and conventional heads of compensation like transportation expenses, damage to clothing, funeral expenses, loss of estate and loss of consortium.

30. It is repeated that the expression 'dependent' is not defined in either Act, 1939 or Act, 1988, unlike in the Employees Compensation Act, 1923 and the Employees State Insurance Act, 1948. Similarly, in Appendix I - Form Comp .A of the Kerala Rules, 1989, no details regarding dependency is required to be furnished.

31. All the above mentioned aspects throws light to the fact that the Parliament has consciously refrained from using the expression 'dependent', despite the recommendations of the Law Commission, instead has permitted the legal representative (s) to move and claim compensation, and the Tribunal to specify the person or persons to whom compensation is to be paid.

32. A three Judge Bench of the Honourable Supreme Court in **Montford Brothers of St.Gabriel and another v. United**

India Insurance and another [(2014) 3 SCC 394] has held as under:

“10. From the aforesaid provisions it is clear that in case of death of a person in a motor vehicle accident, right is available to a legal representative of the deceased or the agent of the legal representative to lodge a claim for compensation under the provisions of the Act. **The issue as to who is a legal representative or its agent is basically an issue of fact and may be decided one way or the other dependent upon the facts of a particular case.** But as a legal proposition it is undeniable that a person claiming to be a legal representative has the locus to maintain an application for compensation under Section 166 of the Act, either directly or through any agent, subject to result of a dispute raised by the other side on this issue.

11. Learned counsel for the Insurance Company tried to persuade us that since the term ‘legal representative’ has not been defined under the Act, the provision of Section 1-A of the the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context, he cited judgment of this Court in the case of Gujarat State Road Transport Corporation, Ahmedabad vs. Raman Bhai Prabhatbhai & Anr.[1]. In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the appellant that since the term ‘legal representative’ is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

(quoted portion omitted, as it is already extracted)

12. From the aforesaid quoted extract it is evident that only if there is a justification in consonance with principles of justice, equity and good conscience, a dependant of the deceased may be denied right to claim compensation. Hence, we find no merit in the submission advanced on behalf of the respondent-Insurance Company that the claim petition is not

maintainable because of the provisions of the [Fatal Accidents Act](#).

13. On behalf of the appellants it has been rightly contended that proceeding before the Motor Vehicle Claims Tribunal is a summary proceeding and unless there is evidence in support of such pleading that the claimant is not a legal representative and therefore the claim petition be dismissed as not maintainable, no such plea can be raised at a subsequent stage and that also through a writ petition. The objection filed on behalf of the Insurance Company, contained in annexure P.2, does not raise any such objection nor there is any evidence led on this issue. As noted earlier, the Tribunal did frame any issue regarding maintainability of the claim petition on law and fact as issue no.1 but the findings recorded by the Tribunal at page 41 of the paper book show that this issue together with issue nos. 2 and 3 were not pressed by the opposite parties during trial and were accordingly decided in favour of the claimants. (emphasis added)

33. The observation in Ramanbhai Prabhatbhai (supra), is worth repeated reference, as hereunder:

“13. xxx xxx xxx We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents xxx xxx xxx”

(emphasis added)

34. On a holistic reading of the provisions of Act, 1988, particularly the usage of the expression ‘legal representative’ instead of the expression ‘dependent’; the definition of ‘legal representative in Rule 2 (k) of the ‘Kerala Rules, 1989’; the

observation of the Honourable Supreme Court in Ramanbhai Prabhatbhai and Montford Brothers of St.Gabriel (supra) and keeping in mind that the enactment is a beneficial and social welfare legislation, impels me to hold that dependency is only a criteria for a legal representative to claim compensation for loss of dependency under Section 166 of the Act, 1988, and is not the 'be all end all' criteria to claim compensation under the other pecuniary, non-pecuniary and conventional heads of compensation. However, in a claim petition filed under Section 166 of the Act, 1988, the dependent has to be a legal representative of the deceased falling within Rule 2 (k) of the Kerala Rules, 1989; otherwise the expression 'legal representative' will be rendered otiose.

35. On a comparison of Section 166 and Section 163 A of the Act, 1988, a subtle difference can be noticed.

36. Section 163 A of the Act, 1988, reads as follows:

"163A. Special provisions as to payment of compensation on structured formula basis.— (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, **to the legal heirs or the victim, as the case may be.**"

37. Clauses (c) and (d) of Sub-Section (1) of Section 166 of Act, 1988, permits an application to be made, where death has resulted from the accident, by all or any of the 'legal representatives' of the deceased; or their duly authorised agent, and thereafter, by Section 168 of the Act, 1988, the Tribunal while making the award has to determine the compensation and the person or persons to whom the compensation has to be paid: Whereas in a claim under Section 163 A of Act, 1988, where death has resulted from the accident, the compensation has to be paid to the 'legal heirs' of the deceased.

38. The choice of words in the above provisions again demonstrates that the Parliament has consciously used the expressions 'legal representative' in Section 166 and 'legal heirs' in the Section 163 A; though both the expressions have not been defined under the Act.

39. In **Kadeeja and others v. Managing Director, KSRTC and Anr.** [2013 (4) KHC 487, a Division Bench of this Court while interpreting Section 163 A and Section 166 of the Act, 1988, with specific reference to dependency held as follows:

“7. xxx xxx xxx There is wide difference in the words used in both the sections regarding the persons entitled to apply for compensation in the case of death of a person, who died in a motor vehicle accident. Under Section 166, in the case of death, the persons entitled to claim compensation are the legal representatives of the deceased. But in the case of a claim under Section 163 A, the persons entitled to claim compensation are the legal heirs. Further, in the case of 166, even if, a person is not a legal heir, if he is able to prove that, he/she is a dependant of the deceased, then irrespective of the fact, whether he/she is a legal heir or not, is entitled to claim compensation, in proportion to the extent of dependency claimed by him/her. In such cases, the dependency will have some relevance for the purpose of assessing compensation. **But for a claim under Section 163 A, the dependency has no relevancy, because the persons who are entitled to file an application for compensation for the death of the deceased are the legal heirs and not the legal representatives.** Once it is proved by the appellants that, they are legal heirs of the deceased then, in a claim under Section 163 A they are entitled to claim compensation for the death of the deceased. Legal representatives include legal heirs as well and not vice versa.”

40. A Full Bench of this Court in **Rajan v. Biju and others** [2017 (3) KHC 133] endorsed *Kadeeja* and held that the conflicting view in **Joseph v. Giji Varghese** [2009 KHC 1076] is no longer good law. Thus, dependency has no relevance in an application filed under Section 163 A of Act, 1988.

Question (iii)

41. Now coming to the question whether the respondents 1, 3 to 4, the married daughter and the septuagenarian parents of the Sreedevi, were dependent on Sreedevi.

42. The respondents had specifically averred in the claim petition that, Sreedevi was the breadwinner of the family and the respondents were dependent on her. The respondents lost

the love, affection, happiness, consortium and pecuniary benefits of Sreedevi. Hence, they were entitled to compensation. The respondents marked Exhibit A-1 to A-6 in evidence. Exhibit A-4 is the family relationship certificate which proves that the respondents were dependent on the Sreedevi and Exhibit A-6 substantiates that the Sreedevi was an anganwadi worker and drawing a monthly honorarium of Rs.10,031/-. Other than for the bald assertion in the written statement of the appellant, that the accident occurred due to the negligence of the Sreedevi and the respondents were not her legal representatives and dependants, the appellant has not let in any evidence to refute the assertion in the claim petition, as laid down in *Montford Brothers of St.Gabriel (supra)*.

43. After Sreedevi became a widow, her septuagenarian parents started living with her and her daughters.

44. There is no dispute that the respondents are the legal representatives of the deceased falling within Rule 2 (k) of the Kerala Rules, 1989.

45. The sheet anchor of the learned Counsel for the appellant was that as the 1st respondent is a married woman and the respondents 3 and 4 are the parents of the deceased,

they were no longer dependent on Sreedevi. Thus, only the 2nd respondent was entitled for compensation that too after deducting one half of the compensation towards the personal living expenses of the deceased.

46. In *Manjuri Bera v. Oriental Insurance Company Limited* and another [(2007) 10 SCC 643], a case similar to one at hand filed by a married daughter seeking compensation for the death of her father, the Honourable Supreme Court held thus:

“12. As observed by this Court in [Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique](#) [1989]2SCR810 the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in [Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr.](#) [1987] 3 SCR 404 a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency. Section 165 of the Act also throws some light on the

controversy. The explanation includes the liability under Sections 140 and 163A.

14. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. **Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act."**

47. In a recent decision in National Insurance Company Limited v. Birender [(2020) 11 SCC 356], a claim petition filed by major married and earning sons of the deceased mother, the Honourable Supreme Court held as follows:

"12. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166 (1). The major married son who is also earning and not fully dependant on the deceased would be still covered by the expression "legal representative" of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression "legal representative" has not been defined in the Act. xxx xxx xxxx

13. In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

(emphasis added)

48. The Madras High Court (through Justice S.Manikumar, as he then was) in Branch Manager, ICICI Lombard General Ins.Co Ltd. v. Kaliyamoorthy and others [2018 KHC 5479] (2020) 11 SCC 356], while dealing with a case filed by the parents and married sister, held thus:

“14.Even in the case of married daughters, a father or mother or brother, can still monetarily help a married daughter, depending upon the need or out of love and affection. A mother can continuously render her valuable service to her daughter, even if the daughter is married. Similarly, a married daughter would still continue to assist her mother, or father, in the case of need. Contribution by means of service or income, both can be taken into account to determine the quantum of compensation. A married daughter is a legal representative, as per the law of succession and that she is entitled to make a claim and it is for the Claims Tribunal or Court, to apportion the amount, between the claimants, depending upon the loss of contribution suffered by the married daughter.

15. Exclusion of a married daughter/sister/brother from the claim petition, altogether would be opposed to the object of the Act and it would be amounting to adding words to the legislation, which the Court is not supposed to do. As held by the Apex Court,

even if there is casus omissus, it is not for the Court to add words to the legislation. The construction and interpretation of the words, legal representatives in Section 166 of the Motor Vehicles Act, in the context and nature of legislation, being beneficial, should be interpreted in such a way not to take away their rights. Merely because a married daughter/sister is living with her husband, in a separate house, that by itself would not disentitle her from claiming compensation, as a legal representative, to represent, the estate of the deceased.

16. If a married daughter/sister/brother has to be excluded from the expression, legal representative, employed in Section 166 of the Motor Vehicles Act, then it would virtually amounting to substituting the words legal representatives with dependants, as used in Section 2 (1) (d) of the Workmen's Compensation Act. No doubt, one who is gainfully employed cannot be called as a dependent. At the same time, not all married daughters/sisters can be said to be gainfully employed. The word dependant has a different meaning in different connotation. Some may be dependent in terms of money and others may be dependent in terms of service.

17. In a given case, when the parents live with a married daughter and if the mother dies, it cannot be said that the married daughter was dependent on the mother, monetarily all the time, but still would have been dependent on her service. If the married daughter is employed, she leaves her children in the care and custody of her mother, when she is away in her office and in such cases, it cannot be said that married daughter did not lose her valuable services, which can be still be a decisive factor, for awarding quantum of compensation.

18. 'Legal Representative' ordinarily includes heirs as well as persons, who represent the estate of the deceased person or a person, on whom, the estate devolves on the death of an individual. Right to claim for compensation by any or all legal representatives under Section 166 of the Motor Vehicles Act is a legal right. It is an assertable right enforceable before Courts and administrative agencies, in its wider sense and therefore, a legal right has to be understood, as any advantage or benefit conferred upon a person by a rule of law; and having regard to the manner, in which, a provision has to be interpreted, as held by the Supreme Court in the decisions stated supra, this Court is of the view that the definition of legal representatives cannot be restricted to exclude married daughters/sisters, from making any claim under Section 166 of the Act and consequently, restrict their claim, only under Section 140 of the Act, which has been engrafted in the statute, with a specific object of compensating

all the legal representative, whether there is negligence, on the part of the deceased or not. It is a "No Fault Liability" clause.

19. Courts have consistently held that what has been specifically excluded by a legislation in a provision cannot be imported into the section by the decisions of Court. By engrafting Section 166 of the Motor Vehicles Act, enabling all the legal representatives to make a claim, in contra distinction to, Section 2(1)(d) of the Workmen's Compensation Act, which enables only the persons enumerated in the said section to claim compensation under Section 3 of the Workmen's Compensation Act, the intention of the legislature is clear and the definition, "legal representative" cannot be narrowed down to mean only "dependents", excluding married daughters/sisters.

20. There could still be a case where there is contribution of a portion of the income of the deceased to a legal representative, who had preferred a claim and he/she would not be wholly dependant on the income of the deceased. A likelihood of loss of contribution from the deceased would give rise to a claim for compensation by him under Section 166 of the Motor Vehicles Act, though he may not be a wholly dependent, as defined in Section 2(1) (d) of the Workmen's Compensation Act.

21. It is a well recognised rule of interpretation of statutes that the expressions used in the statute, should ordinarily be understood, in which, they harmonise with the object of the statute and which effectuate the objection of the legislature and the Court should adopt an object oriented approach, keeping in mind the language employed in the statute. When the legislature has used the words, Legal Representatives in Section 166 of the Act, and having regard to the duty of the Court to act upon the true intention of the legislature, Mens or Sententia Legis, this Court is not inclined to accept the submissions of the Insurance Company, intrepret and circumscribe the meaning of the words, Legal Representatives to mean only dependents. Just because a brother or sister is married, the right to represent the estate of the deceased is not taken away and such an interpretation, would make the provisions of law of succession, ineffective.

22. As the statute is very clear that all the legal representatives can maintain a claim under Section 166 of the Motor Vehicles Act, depending upon the loss of monetary benefit or the gratuitous and invaluable services, measured in terms of money, that the legal representative, might have received and the likelihood of loss in the event of death, brother or sister can maintain a claim, the words "Legal Representatives", cannot be narrowed down to mean only, dependents."

49. It is trite that the Courts in construing a social welfare legislation has to adopt a beneficial rule of construction which would fulfil the policy of the legislation favourable to those in whose interest the enactment has been passed.

50. It would be preposterous to accept the contention of the learned counsel for the appellant that a 25 year old daughter would be no longer dependent on her 49 year old mother because she was given in marriage. The bond between a mother and a daughter is eternal. I reminisce the quotation of Cardinal Mermillod – “No matter how old she may be, sometimes a girl just needs her mom.”

51. Even if dependency is a relevant criterion to claim compensation for loss of dependency, it does not mean financial dependency is the ‘ark of the covenant’. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money.

52. In **Arun Kumar Agrawal and another v. National Insurance Company and others** [(2010) 9 SCC 218], wherein the Honourable Supreme Court while considering the criteria for

determination of compensation of a home maker, held as follows:

“23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.

24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. **In that context, the term 'services' is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.**

53. The Tribunal after a threadbare analysis of the pleadings and materials on record and the ratio in Sarla Verma and Pranay Sethi (supra) fixed the age of the deceased at 49 years, adopted the multiplier at '13', granted 30% towards

future prospects, accepted that the respondents - who are four in number - as the dependents of the deceased, deducted 1/4th of the compensation towards the personal living expenses of the deceased, and awarded a compensation of Rs.15,25,680/- towards loss of dependency and awarded a further amount of Rs.2,07,000/- under the pecuniary, non-pecuniary and conventional heads, totalling to an amount of Rs.17,32,680/- with interest and costs.

54. On a comprehensive re-appreciation of the pleadings, materials and law discussed above, without any scintilla of doubt, I confirm the finding of the Tribunal that Shalumol - the 1st respondent – is a dependent of Sreedevi, and she is also entitled to compensation for loss of dependency.

55. It is on record that the respondents 3 and 4 – the septuagenarian parents of Sreedevi – started living with her after the demise of her husband. Sreedevi was the only earning member in the family. She was maintaining the respondents 3 and 4 as evidenced by A-4 family relationship certificate.

56. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, casts a statutory duty to maintain a senior

citizen, who is unable to maintain himself. Therefore, even if Sreedevi had neglected to maintain the respondents 3 and 4, they were legally entitled to an order of maintenance under the above statute. In view of the clinching materials on record and the well neigh settled law, I also confirm the finding of the Tribunal that the respondents 3 and 4 were the dependents of Sreedevi.

57. In **New Insurance Company Ltd v. Kiran Singh & Ors** [(2004) 10 SCC 649] the Honourable Supreme Court has deprecated the practice of insurance companies contesting genuine claims in a routine manner and dragging the parties to court and wasting enormous time and money. It was also observed that if such instances are brought to the notice of the court, the court would be obliged to dismiss such appeals with heavy cost.

58. After bestowing my anxious consideration in the matter, I am of the definite opinion that there is no error or illegality in the impugned award passed by Tribunal warranting any interference by this Court, except to modify the disbursement of compensation between the respondents in the proportion of 30:50:10:10.

In the result I dismiss the appeal by confirming the impugned award, except for the modification made above regarding apportionment of compensation. I place on record the valuable assistance rendered by Smt.Latha Susan Cherian, the learned Amicus Curiae.

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Sd/- **C.S.DIAS, JUDGE**

/True copy/