



2023/KER/53747

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

TUESDAY, THE 12TH DAY OF SEPTEMBER 2023 / 21ST BHADRA, 1945

MACA NO. 535 OF 2016

AGAINST THE AWARD DATED 03.08.2015 IN OPMV 936/2006 OF MOTOR
ACCIDENT CLAIMS TRIBUNAL, THIRUVANANTHAPURAM

APPELLANT/3RD RESPONDENT:

ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED
NOW REPRESENTED BY THEIR ZONAL HEAD,
SUBRAMANIAM BUILDING, CLUB HOUSE ROAD,
ANNASALAI, CHENNAI-600 002.

BY ADVS.

SRI.MATHEWS JACOB (SR.)

SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS:

- 1 V.S.SUJATHA,W/O.LATE KRISHNANKUTTY,
T.C.24/32, MADHAVAPURAM, VELI TOURIST VILLAGE,
THIRUVANANTHAPURAM. PIN-695 035.
- 2 ARUNKUMAR K, S/O.LATE KRISHNANKUTTY,
T.C.15/1248, MRA-97, KRISHNA SARAS,
VANCHIYOOR.P.O.,
THIRUVANANTHAPURAM-695 035.
- 3 ANUPKRISHNAN K,S/O.LATE KRISHNANKUTTY,
T.C.15/1248, MRA-97, KRISHNA SARAS,
VANCHIYOOR.P.O., THIRUVANANTHAPURAM-695 035.

BY ADVS.

SMT.AYSHA ABRAHAM

SMT.G.MAHESWARY

SRI.R.V.SREEJITH

SRI.ZAKEER HUSAIN M.K.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY ON
13.07.2023 ALONG WITH MACA.3849/2016, THE COURT ON 12.09.2023
DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MURALI PURUSHOTHAMAN

TUESDAY, THE 12TH DAY OF SEPTEMBER 2023 / 21ST BHADRA, 1945MACA NO. 3849 OF 2016AGAINST THE AWARD DATED 03.08.2015 IN OPMV 936/2006 OF MOTOR
ACCIDENT CLAIMS TRIBUNAL, THIRUVANANTHAPURAMAPPELLANTS/PETITIONERS 2 & 3:

- 1 ARUNKUMAR K, S/O LATE KRISHNANKUTTY, T.C 15/1248, MRA-97, KRISHNA SARAS, VANCHIYOOR P.O, THIRUVANANTHAPURAM.
- 2 ANUPKRISHNAN.K, S/O LATE KRISHNANKUTTY, T.C 15/1248, MRA-97, KRISHNA SARAS, VANCHIYOOR P.O, THIRUVANANTHAPURAM.

BY ADVS.

SRI.R.V.SREEJITH

SMT.G.MAHESWARY

RESPONDENTS/1ST PETITIONER & RESPONDENTS 1 TO 5:

- 1 V.S.SUJATHA, W/O.KRISHNANKUTTY N.K, T.C. 24/32, MADHAVAPURAM, VELI TOURIST VILLAGE, THIRUVANANTHAPURAM 695 001.
- 2 A. RAJESWARI, W/O M.R. ANNAMALIA, NO 16/2, ENGINEER SUBARAYA STREET, ARASAMARAPET, VELLORE, VELLORE DISTRICT, TAMIL NADU 632 004.
- 3 R. PARVATHAM, S/O RAMA COUNDER, KIDAMPALAYAM VILLAGE AND P.O, POLUR TK, KIDAMPALAYAM DESOM, VELLUR TALUK, TAMIL NADU 632 004.
- 4 ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LTD SUNDARAM TOWERS 45&46, WHILLAR ROAD, TAMIL NADU 632 004.
- 5 SECRETARY, PUBLIC SERVICE COMMISSION, THIRUVANANTHAPURAM 695 004
- 6 KERALA STATE INSURANCE DEPARTMENT, THIRUVANANTHAPURAM 695 001.

BY ADVS.

SRI.P.JACOB MATHEW

SRI.MATHEWS JACOB SR.

SRI. P.C.SASIDHARAN-SC

SRI.K.M.FAISAL, GP

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME HAVING BEEN FINALLY HEARD ON 13.07.2023 ALONG WITH MACA.535/2016, THE COURT ON 12.09.2023 DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT**

Since both the appeals arise from the award dated 03.08.2015 in O.P. (M.V) No.936/2006 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram, they are disposed of by this common judgment. The parties are referred to as per their status in the claim petition.

2. M.A.C.A No.535 of 2016 is preferred by the 3rd respondent insurance company contending that the compensation awarded by the Tribunal is excessive. M.A.C.A No. 3849 of 2016 is filed by petitioners 2 and 3 aggrieved by the ratio of apportionment of compensation among the petitioners.

3. The petitioners are the legal heirs of one Krishnankutty who died in a motor vehicle accident occurred on 28.12.2005. The deceased Krishnankutty was in the service of the Kerala Public Service Commission (KPSC) at the time of the accident. The 1st petitioner claims that she is the legally wedded wife of the deceased and petitioners 2 and 3 are the children of the deceased in his



divorced wife. According to the petitioners, on 28.12.2005, while the deceased was travelling along the NH 47 from Thrissur to Palakkad in a car owned by the KPSC, a lorry bearing Regn. No. TN-23-AA-9400 owned by the 1st respondent, driven by the 2nd respondent and insured with the 3rd respondent, hit against the car causing fatal injuries to him and he succumbed to the injuries. Initially, the original petition was filed claiming an amount of Rs. 10 lakhs as compensation for the death of the deceased. Later, the amounts claimed under different heads were amended and the total claim was enhanced to Rs. 40 lakhs. It was contended that the accident occurred due to the negligence of the second respondent. No relief is claimed against respondents 4 and 5, the Secretary, KPSC, the registered owner and the insurer, of the car.

4. Before the Tribunal, respondents 1 and 5 were set *ex parte*. The 1st petitioner was examined as PW1 and Exts A1 to A13 documents were marked from her side.

5. The 3rd respondent filed written statement contending that the 1st petitioner is not the legally wedded wife of deceased and is



not entitled to get any compensation as claimed for. Though they admitted that the lorry was covered by a valid policy of insurance, it was contended that the amount of compensation claimed is exorbitant. They also disputed the age, occupation and monthly income of the deceased.

6. The Tribunal, on the basis of the deposition of PW1 and taking into account Ext.A8 marriage Certificate and Ext.A12 legal heirship certificate, held that the 1st petitioner is the legally wedded wife of the deceased and petitioners 2 and 3 are the children of the deceased in his divorced wife and being the legal heirs, they are entitled to claim compensation.

7. The Tribunal found that the deceased was above 54 years of age at the relevant time and took the multiplier as '11'. Relying on Ext.A11 salary certificate issued from KPSC, the gross monthly salary of the deceased was taken as Rs.36,288/-. After deducting 20% towards income tax, the monthly income was taken as Rs.29,030/-. The Tribunal found that petitioners 2 and 3 are not the dependents of the deceased and held the 1st petitioner alone as the



dependent and deducted 1/3rd of the income towards the personal and living expenses of the deceased. Based on the above factors, the Tribunal assessed the loss of dependency as Rs.25,54,640/- [29030×12×11×2/3]. Towards loss of consortium, the 1st petitioner was awarded an amount of Rs. 50,000/-. Under the heads funeral expenses and loss of love and affection, the petitioners were awarded Rs.25,000/- each. Accordingly, the Tribunal awarded a total compensation of Rs.26,89,640/- (rounded to Rs.26,90,000/-) with 9% interest per annum from the date of petition till date of deposit. The split up of the compensation awarded by the Tribunal under various heads is as follows:

SL No	Head of Claim	Amount Claimed	Amount Awarded	Basis/ vital details in a nut shell
1	Transportation to hospital and back	Nil	1000	Reasonable estimate made
2	Damage to clothing & articles	50000	1000	Reasonable estimate made
3	Funeral expenses	Nil	25000	Reasonable estimate made
4	Loss of consortium	200000	50000	Reasonable estimate made
5	Compensation for pain and suffering etc.	100000	8000	Reasonable estimate made



6	Compensation for loss of dependency benefit	2700000	2554640	$29030 \times 12 \times 11 \times 2/3$
7	Compensation for loss of estate	200000	25000	Reasonable estimate made
8	Compensation for loss of love and affection	300000	25000	Reasonable estimate made
Total 26,89,640				
(Rounded to Rs.26,90,000/-)				

8. The 3rd respondent insurer was made liable to indemnify the 1st respondent and to satisfy the award. The 3rd respondent was also directed to produce cheque for Rs.50,000/- in favour of the 1st petitioner towards payment of compensation for loss of consortium and the balance amount was ordered to be apportioned among the petitioners in the ratio of 3:1:1.

9. Aggrieved by the amount awarded by the Tribunal, the 3rd respondent insurer has come up with M.A.C.A. No.535 of 2016 and dissatisfied with the ratio of apportionment of compensation, the petitioners 2 and 3 have preferred M.A.C.A. No.3849 of 2016.

10. Heard Sri.Yeshwanth Shenoy, the learned counsel for the 1st petitioner, Sri. R.V. Sreejith, for petitioners 2 and 3 and Sri.



Mathews Jacob, the learned senior counsel for the 3rd respondent Insurance Company. Sri. Yeshwanth has submitted a detailed argument note.

11. According to the 3rd respondent, since the Tribunal found that the petitioners 2 and 3 are not the dependents of the deceased, one half of the income should have been deducted towards his personal and living expenses. It is further contended that the Tribunal went wrong in taking the multiplier of '11' and ought to have taken a 'split multiplier' taking note of the fact that the deceased, who had already crossed the age of 55, would have superannuated from service at the age of 56.

12. The petitioners 2 and 3 impugn the award to the extent it apportioned the compensation in the ratio 3:1:1.

13. In the light of the contentions raised by the 3rd respondent, this Court has to first consider whether the compensation awarded by the Tribunal is just and reasonable, or excessive as alleged.



14. **In Sarla Verma v. Delhi Transport Corporation [2009 (6) SCC 121: AIR 2009 SC 3104]**, the Hon'ble Supreme Court, on the question of deduction towards the personal and living expenses of the deceased, held that, the personal and living expenses of the deceased should be deducted from his monthly income, to arrive at the contribution to the dependents. Where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third. Therefore, the deduction of one-third towards the personal and living expenses of the deceased who was married, with his wife as a dependent, does not require any interference.

15. With regard to multiplier of '11' adopted by the Tribunal, the contention of the 3rd respondent is that since the deceased had less than two years of service left for superannuation, the Tribunal ought to have adopted split multiplier. The Hon'ble Supreme Court in **Valli R. and others v. Tamil Nadu State Transport Corporation Ltd [AIR 2022 SC 1096: (2022) 5 SCC 107: 2022 KHC 6162]** held that, multiplier cannot be applied by considering



the remaining years of service of the deceased. In **Sarla Verma (Supra)** and in **National Insurance Company Limited v. Pranay Sethi and Others** [AIR 2017 SC 5157: (2017) 16 SCC 680: 2017 (5) KHC 350: 2017 (4) KLT 662], the Supreme Court held that the age of the deceased should be the basis for applying the multiplier. In **Valli** (supra), the Supreme Court held that the method of determination of compensation applying two multipliers is clearly erroneous and run counter to the judgment in **Pranay Sethi**, which affirmed the judgment in **Sarla Verma**. In **Jayasree N. and others v. Cholamandalam MS General Insurance Company Ltd** [AIR 2021 SC 5218: 2021 (6) KHC 163], the Supreme Court held that, in the absence of any specific reason and evidence on record, the Tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per the decision in **Sarla Verma** as affirmed in **Reshma Kumari and others v. Madan Mohan and another** (2013 KHC 4253: 2013 (2) KLT 304: (2013) 9 SCC 65]. Since the deceased was 54 years of age as on the date of incident, the



suitable multiplier is '11' as per the dictum laid down in **Sarla Verma** (supra) and **Pranay Sethi** (supra). Accordingly, the contention of the 3rd respondent with regard to adoption of split multiplier has to be rejected.

16. In **Pranay Sethi** (supra), the Supreme Court held that, while determining the income, an addition of 15% of the actual salary to the income of the deceased shall be made towards future prospects, in case the deceased was between the age of 50 to 60 years and was having permanent job. It was observed that, actual salary should be read as actual salary less tax. The Tribunal has not added future prospects while determining the income of the deceased. Therefore, the income of the deceased and the compensation for loss of dependency has to be reworked. Adding 15% of the income towards future prospects, the monthly income of the deceased would come to Rs. 33,384.5/- [29030+(29030x15%)]. Accordingly, the compensation for loss of dependency is reworked as **Rs.29,37,836/-** [33,384.5×12×11×2/3].



Therefore, the petitioners are entitled to an additional amount of **Rs.3,83,196/-** (29,37,836-25,54,640) towards loss of dependency.

17. Under the head funeral expenses, the Tribunal has awarded an amount of Rs. 25,000/-. The petitioners are entitled only for an amount of Rs.15,000/- under the said head in the light of the decision in **Pranay Sethi** (supra). Therefore, an amount of **Rs.10,000/-** has to be deducted from the total compensation.

18. Towards pain and sufferings, an amount of Rs.8,000/- has been awarded by the Tribunal. As per the dictum laid down by the Hon'ble Supreme Court in **Oriental Insurance Company Limited v. Kahlon** [AIR 2021 SC 3913], the petitioners are not entitled for any amount under the head pain and sufferings. Therefore, an amount of **Rs.8,000/-** has to be deducted from the total compensation.

19. For loss of estate, an amount of Rs.25,000/- has been awarded by the Tribunal. As per the decision of the Hon'ble Supreme Court in **Pranay Sethi** (supra), the petitioners are entitled only for an amount of Rs.15,000/- as compensation for



loss of estate. Therefore, an amount of **Rs.10,000/-** has to be deducted from the said head.

20. The Tribunal has awarded an amount of Rs.50,000/- to the 1st petitioner towards compensation for loss of consortium. No amount has been awarded to petitioners 2 and 3 towards loss of consortium. The petitioners 2 and 3 are major sons of the deceased. Parental consortium is awarded to the child upon the premature death of a parent for loss of 'parental aid, protection, affection, society, discipline, guidance and training'. The petitioners 2 and 3 are entitled to an amount of Rs. 40,000/- each towards loss of parental consortium in the light of the decision in **Magma General Insurance Co. Ltd v. Nanu Ram alias Chuhru Ram and others** [2018 KHC 6697]. The 1st petitioner being the wife of the deceased is entitled to an amount of Rs.40,000/- towards spousal consortium in the light of the decision in **Pranay Sethi** (supra) and **United India Insurance Company v. Satinder Kaur** [AIR 2020 SC 3076]. Since the 1st petitioner is awarded Rs. 50,000/- towards loss of consortium, an



amount of **Rs. 10,000/-** has to be deducted from the total compensation. The petitioners 2 and 3 are together entitled for an amount of **Rs. 80,000/-** towards parental consortium.

21. An amount of Rs. 25,000/- has been awarded by the Tribunal under the head loss of love and affection. In **Satinder Kaur** (supra), the Apex Court has held that when compensation is awarded under the head loss of consortium, no separate compensation is payable under the head loss of love and affection. Therefore, an amount of **Rs.25,000/-** awarded under the head loss of love and affection has to be deducted.

22. The compensation awarded under other heads is just and reasonable.

23. The petitioners are, therefore, entitled for an amount of **Rs.30,89,836/-** [26,89,640+3,83,196-10,000+80000-8000-10,000-10,000-25,000] as total compensation for the death of the deceased. The enhanced compensation will come to **Rs.4,00,196/-**.



24. The 1st petitioner has not chosen to file any appeal against the award and the petitioners 2 and 3 have challenged the award only to the limited extent of the ratio regarding apportionment of compensation between the 1st petitioner and themselves. This Court, in the nature of the contention of the insurance company that the award is excessive, ventured to find out whether the award is just and reasonable and in the process, found that the petitioners are entitled for an enhanced compensation of Rs. 400,196/- It is now trite that the appellate Court in appeal filed by the insurance company can enhance compensation without appeal or cross objection by the claimant in order to award just and reasonable compensation. The Supreme Court in **APSRTC represented by its General Manager v. M. Ramadevi and others** [(2008) 3 SCC 379], relying on the decision in **Nagappa v. Gurudayal Singh** [(2003) 2 SCC 274] has held that, High Court is justified in enhancing compensation even when there is no appeal by the claimant. In **Nagappa** (supra), the Apex Court held as under:



“10. Thereafter, S.168 empowers the claims tribunal to "make an award determining the amount of compensation which appears to it to be just." Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation.”

A Division Bench of this Court, in **Special Grade Secretary, Kumaly Panchayath v. Maniammal and others** [2017(5)KHC 606: 2017 (4) KLT 909], has held that, even in the absence of appeal or cross objection by claimants, the appellate Court can invoke powers under Order 41 Rule 33 of the Code of Civil Procedure in order to ensure that 'just compensation' is awarded in motor accident claims.

25. Since on a re-appreciation of the materials available on record and in the light of the decisions of the Apex Court, this Court has arrived at the just and reasonable compensation payable to the petitioners, technicalities shall not stand in the way of awarding the enhanced compensation to the petitioners.



Accordingly, I hold that the petitioners are entitled to enhanced compensation of Rs. 4,00,196/-.

26. With regard to apportionment of compensation in the ratio 3:1:1, it is contended by petitioners 2 and 3 that the apportionment ought to have been done in the ratio 1:1:1 since as per the Hindu Succession Act, the wife and sons of the deceased will get per capita share on the estate of the deceased. This contention of Sri. Sreejith is sought to be met by Sri. Yeshwant on the basis of the finding of the Tribunal that petitioners 2 and 3 are not dependants of the deceased. According to Sri. Yeshwant, once the Tribunal has held that the petitioners 2 and 3 are not dependants of the deceased, the Tribunal ought not to have apportioned the compensation at all since the concept of dependency and legal heirship is different. It is further argued that, all that the petitioners 2 and 3 would be entitled to, is the compensation for loss of parental consortium and if the per capita share on the loss of estate of the deceased is to be apportioned, then the petitioners would be entitled to Rs.5,500/- (one-third of



Rs.16,500/-) each on the compensation for 'loss of estate' of the deceased. To be precise, the contention of Sri. Yeshwant is that petitioners 2 and 3 are entitled for compensation only under the conventional head of loss of estate, that too, in the ratio 1:1:1. Sri. Sreejith would contend that in the absence of appeal by the 1st petitioner, the aforesaid arguments of Sri. Yeshwant cannot be entertained.

27. Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act' for short) deals with application for compensation and the persons competent to file the application. It reads thus:-

"S.166. Application for compensation. - (1)

An application for compensation arising out of an accident of the nature specified in sub-section (1) of S.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:

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.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under S.140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) xxxx xxxx

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of



S.158 as an application for compensation under this Act."

(underlining supplied)

28. Section 168 of the Act deals with award of Claims Tribunal and it reads as follows:

"Award of the Claims Tribunal:- On receipt of an application for compensation made under S.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 of S.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: Provided that where such application makes a claim for compensation under S.140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in



accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct."

(underlining supplied)

The application for compensation can be made by all or any of the legal representatives of the deceased on behalf of or for the benefit of all the legal representatives of the deceased and the Tribunal, while making an award, has to specify the person or persons who are entitled for compensation. The term "legal representative" is not defined under the Motor Vehicles Act, 1988. Section 2(11) of CPC defines "legal representative" to mean 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. Rule 2 (k) of the Kerala Motor Vehicles Rules, 1989 defines "legal representative" to mean 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. It thus includes heirs as well as persons who represent the estate of the deceased. Here, the application for compensation has been made by the legal representatives of the deceased. It is for the Tribunal to specify the person or persons to whom the compensation is to be paid. It is while deciding the entitlement for compensation under Section 168 (1), the Tribunal apportions the compensation among the legal representatives. The Act is silent as to how the apportionment of compensation among the legal representatives has to be made.

29. In **National Insurance Co. Ltd. v Birender and**



others [AIR 2020 SC 434: (2020) 11 SCC 356: 2020 KHC 6026: 2020 (2) KLT 182: 2020], the Hon'ble Supreme Court considered the issue as to whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act, 1988 and whether such legal representatives are entitled only for compensation under the conventional heads? The Court held:-

“13. Reverting to the first issue - that needs to be answered on the basis of the scheme of the Act. S.166 of the Act provides for filing of application for compensation by persons mentioned in clauses (a) to (d) of sub-Section (1) thereof. S.166 of the Act, as applicable at the relevant time, reads thus:

"S.166. Application for compensation.

xxx xxx

14. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of S.166(1). The major married son who is also earning and not fully dependent 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. In *Manjuri Bera* (supra), the Court observed thus: -

"9. In terms of clause (c) of sub-section (1) of S.166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of S.166 of the Act.

10. The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.

11. According to S.2(11) CPC, "legal representative" means 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. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under S.2(1)(g).

12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique* [1989 Supp (2) SCC 275 the definition contained in S.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 SRTC v. Ramanbhai Prabhatbhai* [(1987) 3 SCC 234 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."

In paragraph 15 of the said decision, while adverting to the provisions of S.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 S.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.

15. 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 dependent 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 meager income between Rs.1,00,000/- and Rs.1,50,000/- per annum. In that sense, they were largely dependent 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.”



(underlining supplied by this Court)

Thus, even if there is no loss of dependency, if the claimant is a legal representative of the deceased, he would be entitled to compensation. The compensation payable goes to the 'estate' of the deceased. As held by the Apex Court, compensation constitutes part of the estate of deceased and as a result, the legal representative of deceased would inherit the estate even if he was not dependent on the deceased and even if he is not a legal heir. The legal representative need not be a legal heir. Since the entitlement of compensation under the Act is for the legal representatives, the Law of Succession cannot be followed as a thumb rule for apportionment of compensation between the legal representatives. I am not inclined to accept the contention of Sri. Sreejith that the apportionment of compensation shall be as per the Hindu Succession Act. The apportionment of compensation has to be made depending on the facts and circumstances of each case.

30. In terms of Section 168(1) of the Act, the Tribunal has



specified the person to whom the compensation shall be paid, which includes all the three petitioners who are the legal representatives of the deceased. The ratio of apportionment of compensation has been fixed by the Tribunal as 3:1:1. Though the question of dependency cannot be the basis for entitlement of compensation, once the entitlement of the legal representative for compensation is found, dependency can be a basis for apportionment of compensation. The 1st petitioner, the widow of the deceased was aged 47 at the time of the accident and was dependent on the deceased. She had no future job prospects. The Tribunal found that the petitioners 2 and 3 were majors at the time of accident and were not dependent on the deceased and the said finding is not challenged. True, even if there is no loss of dependency, being legal representatives of the deceased, the petitioners 2 and 3 would be entitled to compensation. However, they are not entitled for equal shares. The Tribunal has apportioned the compensation in the ratio 3:1:1. Taking into consideration the loss of dependency suffered by the 1st petitioner,



the age of the petitioners and future job prospects, I find the apportionment of compensation in the ratio 3:1:1 by the Tribunal as just and reasonable. I do not find any reason to interfere with the said apportionment.

The 3rd respondent insurer shall pay the enhanced compensation of Rs. 400,196/- with 9% interest per annum from the date of filing the petition till date of deposit with proportionate costs. This Court while admitting M.A.C.A No.535/2016 has granted an interim stay of execution of award on condition that the 3rd respondent remits 40% of the amount within one month and the petitioners were given liberty to withdraw the said amount. The balance amount, as modified by this Court, with interest and costs shall be deposited by the 3rd respondent within a period of two months from the date of receipt of a copy of this judgment. While calculating interest on enhanced compensation, the petitioners will not be entitled to interest for a period of 132 days in terms of the order dated 02.06.2023 in C.M. Application No.2/2016 in M.A.C.A No. 3849 of 2016. The entire



compensation other than that awarded under the head consortium shall be apportioned among the petitioners in the ratio 3:1:1.

The appeals are disposed of.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

spc/