

## James (Unsound Mind) Vs Sajeevan

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 17, 2025

**Acts Referred:** Kerala Torts (Miscellaneous Provisions) Act, 1977 & Section 2

**Hon'ble Judges:** C.Pratheep Kumar, J

**Bench:** Single Bench

**Advocate:** Anupama Johny, George Cherian, Latha Susan Cherian, K.S.Santhi

**Final Decision:** Partly Allowed

### Judgement

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C.Pratheep Kumar, J",,,

1. The petitioners in O.P.(M.V.)No.1015/2009 on the file of the Motor Accident Claims Tribunal, Perumbavoor, are the appellants herein. The",,,

respondents in the O.P. are the respondents herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the",,,

Tribunal),,,

2. The petitioners 2 to 5 are the wife, minor children and mother of the deceased original petitioner. The original petition was filed claiming",,,

compensation for the injuries sustained by the deceased in a motor vehicle accident that occurred on 16.2.2009. According to them, on 16.2.2009 at",,,

5.30 p.m, the Mini lorry bearing registration No.KL-11/2732 driven by the 1st respondent in a rash and negligent manner overturned into a canal,",,

resulting in injuries to the late petitioner, who was working as the cleaner in the said vehicle. He succumbed to the injuries on 7.9.2009.",,

3. The 1st respondent is the driver-cum-registered owner and the 2nd respondent is the insurer of the lorry. According to the the petitioners, the",,,

accident occurred due to the negligence of the driver of the mini lorry. Therefore, they filed the OP claiming a compensation of Rs.23,41,000/- limited",,,

to 15,00,000/-.",,

4. The 1st respondent remained ex-parte. The 2nd respondent filed a written statement, admitting the policy and disputing the negligence on the part of",,,

the driver of the offending vehicle.,,,

5. No oral evidence is adduced by either side. The evidence in the case consists of the documentary evidence Exts.A1 to A12 and B1.,,,

6. After evaluating the evidence on record, the Tribunal awarded a total compensation of Rs.10,78,929/-",,,

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners preferred this appeal.",,,

8. Now the point that arises for consideration is the following:,,,

Whether the quantum of compensation awarded by the Tribunal is just and reasonable.,,,

9. Heard Smt.Anupama Johny, the learned counsel for the petitioners/appellants and the learned Standing Counsel Smt.Latha Susan Cherian.",,,

10. The Point: In this case the accident and valid policy of the offending vehicle are admitted. Though in the written statement the 2nd respondent has,,,

contended that the accident occurred not due to the negligence of the 1st respondent, at the time of arguments such a contention was not taken. The",,,

petitioners produced Ext.A4, copy of the charge sheet involved in the crime registered against the driver of the offending vehicle, in respect to the",,,

above accident. In the light of the above charge sheet, negligence on the part of the driver of the offending vehicle stands proved. Therefore, the 2nd",,,

respondent, being the insurer, is liable to indemnify the compensation, which is liable to be awarded against the owner of the offending vehicle.",,,

11. The incident was on 16.2.2009. The appellants claimed that being a cleaner in the lorry, the deceased was having a monthly income of Rs.5000/-",,,

However, they could not prove the said claim, by adducing evidence. Therefore, by virtue of the decision of the Hon'ble Supreme Court in",,,

Ramachandrappa v. Manager, Royal Sundaram Alliance [(2011) 13 SCC 236], his notional income is liable to be fixed at Rs.7000/-.",,,

12. Since, on the date of accident, the deceased was aged 40 years, 25% of his income is to be added towards future prospects, and the multiplier to",,,

be applied is 15, in the light of the decision in National Insurance Co.Ltd v Pranay Sethi [(2017) 16 SCC 680].",,,

13. The deceased being married and having 4 dependants, deduction towards his personal and living expense is 1/4 of his income , in the light of the",,,

decision of Hon'ble Supreme Court in Sarla Verma v. Delhi Transport Corporation [(2009) 6 SCC 121]. Therefore, the loss of dependency will come",,,

to Rs.11,81,250/-.",,,

14. The Tribunal has not awarded any amount towards loss of estate. Rs.25,000/- was awarded towards funeral expenses, and Rs.1,00,000/- towards",,,

loss of consortium. In the light of the decision in Pranay Sethi (supra), the appellants are entitled to get a consolidated sum of Rs.15,000/- towards loss",,,

of estate, Rs.15,000/-towards funeral expenses, Rs.40,000/- each towards loss of consortium, with an increase of 10% in every three years.",,,

Therefore, the amount of compensation on account of loss of estate and funeral expense will come to Rs.18,150/- each and loss of consortium will",,,

come to Rs.1,93,600/- (48,400 x 4), to petitioners 2 to 5." ,,,

15. The Tribunal has awarded a sum of Rs.1,00,000/- towards love and affection. Since compensation for loss of consortium was given, further" ,,,

amount for love and affection cannot be granted, in view of the decision in New India Assurance Company Ltd. v. Somwati and Others, (2020)9 SCC" ,,,

644. Therefore, the above sum of Rs.1,00,000/- given towards love and affection is to be deducted." ,,,

16. Towards pain and suffering, the Tribunal has awarded Rs.25,000/-alone which, according to the learned counsel for the petitioner is too low." ,,,

According to him, the deceased lived for a period of seven months undergoing all the pain and suffering, till he breathed his last. Therefore, it was" ,,,

argued that towards pain and suffering, a considerable amount of compensation is to be awarded. On the other hand, the learned counsel for the 3rd" ,,,

respondent would argue that since the victim died, the legal heirs are not entitled to get any compensation for pain and suffering. She has also relied" ,,,

upon the decision of the Hon'ble Supreme Court in Oriental Insurance Company Ltd. v. Kahlon @ Jasmit Singh Kahlon, AIR 2021 SC 3913, in which" ,,,

the Hon'ble Supreme Court held that the legal heirs are not entitled to get any compensation under the head pain and suffering as it is a personal injury" ,,,

suffered by the deceased. ,,,

17. However, in the State of Kerala by virtue of Section 2 of the Kerala Torts (Miscellaneous Provisions) Act, 1977 (in short the Act of 1977), the" ,,,

cause of action on account of the personal claim would survive to the legal heirs. Application of the above provision was dealt with by a Division" ,,,

bench of this Court in Anuradha Varma v. State of Kerala, 1993 (2) KLT 777. In paragraph 8 the Division Bench observed as follows : " ,,,

“8. Coming to the merits of the case, we do not think that any interference is called for in regard to the award of the M.A.C.T. except in regard to pain and" ,,,

suffering for which no compensation was awarded by the Tribunal. As stated earlier, the Tribunal rejected the same on the basis of the concession made by the" ,,,

advocate that on the death of the original claimant Santharam Varma that claim abates and the legal representatives are not entitled to claim the same. In the" ,,,

light of Section 2 of the Kerala Torts (Miscellaneous Provisions) Act, 1977, even such claims survive the death of the injured. By Section 9 of the aforementioned" ,,,

Act, Section 306 of the Indian Succession Act, 1925, so far as it relates to right of action in torts, shall cease to apply to the State of Kerala. Accordingly the legal" ,,,

representatives are entitled to initiate an action for such damages or to proceed with the claim already made by the injured. It is well settled that a concession by" ,,,

the advocate on a question of law is not binding on the parties and they are entitled to challenge the same in appeal. ,,,

18. In the decision in Jaya v. Shaji, 2014 (1) KLT 31, another Division Bench of this Court also had occasion to consider the effect of Section 2 of Act" ,,,

of 1977. In paragraph 6 the Division Bench held that :,,

Ã, Ãçâ,¬Ã"6. It is an admitted fact that Rajesh sustained injuries in a motor vehicle accident and the Tribunal also found that the accident occurred due to the,,

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No.",Head of claim,"Amount awarded by the

Tribunal(Rs)","TheÃ, amount given in

appeal (Rs.)

1,Loss of earnings,24500,24500

2,Partial loss of earnings,Nil,Nil

3,Transport to Hospital,5000,5000

4,Extra nourishment,5250,20000

5,Damage to clothes,500,500

6,Medical expenses,292254,292254

7,Attendance expenses,27300,35000

8,Disfiguration,Nil,Nil

9,Loss of love and affection,100000,Nil

10,Loss of consortium,100000,193600

11,Pain and suffering,25000,100000

12,Loss of amenities,20000,20000

13,Disability,Nil,Nil

14,Loss of earning power,Nil,Nil

15,Loss of estate,Nil,18150

16,Funeral expense,25000,18150

17,Loss of dependency etc,454125,1181250

,Total,"10,78,929","19,08,404

,Amount enhanced,"8,29,475",