IN THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM

Present: Smt. Prasanna Gopan, MACT, Kollam

Friday, the 01st day of August, 2025/10th day of Shravana, 1947

OP(MV) No. 2400/2020 & OP(MV) No. 2389/2020

OP(MV) No. 2400/2020

Between Petitioner :	Sumith.S, aged 34 years, S/o Subrahmanyan, Ayyathu veedu, Azheekkal.P.O, Alappad, Karunagappally.

By Adv.: S.Jayasankar

And Respondents :	1.	Arunkumar, S/o Ashokan, Narakathumvilayil, Kallelibhagom Muri, Kallelibhagom village, Karunagappally
	2.	Aswathy, Kadampath Palassery, Amarambalam.P.O, Koottampara Muri, Malappuram- 679332.
	3.	The New India Assurance Co. Ltd., Kollam- 691001.
	Addl.R4.	The Manager, HDFC ERGO GIC Ltd., 3rd Floor, Malankara Avenue, M.G.Road, Pattom, Thiruvananthapuram- 695004

By Adv. : B. Venugopal for R3 &
Adv. S. Dileepkumar for Addl. R4
[The 1st and 2nd respondents remain exparte]
[Addl. R4 is impleaded as per Order in I.A 4/2023 dated 06.05.2024]

OP(MV) No. 2389/2020

Between Petitioner :	Lithin.L, aged 22 years, S/o Leelakrishnan, Ayyath veedu, Azheekkal.P.O, Aalappad, Karunagappally.

By Adv.: S.Jayasankar

And Respondents :	1.	Arunkumar, S/o Ashokan, Narakathumvilayil, Kallelibhagom Muri, Kallelibhagom village, Karunagappally
	2.	Aswathy, Kadampath Palassery, Amarmbalam.P.O, Koottampara Muri, Malappuram- 679332.
	3.	The New India Assurance Co. Ltd., Kollam- 691001.
	4.	The Manager, HDFC ERGO GIC Ltd., 3rd Floor, Malankara Avenue, M.G.Road, Pattom, Thiruvananthapuram- 695004

By Adv. : Thirumullavaram. G Siva Sankara Pillai for R3,
and Adv. Ambili George for Addl. R4
[The 1st and 2nd respondents remain exparte]
[Addl. R4 is impleaded as per Order in I.A 3/2023 dated 31.07.2024]

These OP(MV)s are coming on for hearing before me on 23-07-2025 and having stood over to 01-08-2025 for consideration and on the same day the Tribunal passed the following:-

COMMON AWARD

1. OP (MV) No.2400/2020

Petition for compensation filed under Section 140 & 166 of the Motor Vehicles Act claiming compensation for the injuries sustained by the petitioner in the motor accident which occurred on 09/08/2020.

2. The petitioner’s case in brief is that on 09/08/2020 at about 2.30 pm the petitioner was riding the motorcycle bearing Reg.No.KL 23 K 1653 from south to north along Azheeckkal Harbour- Azheeckkal Junction road and when the

motorcycle reached near Azheeckkal Harbour the car bearing Reg.No.KL 71 G 4506 driven by the 1st respondent in a rash and negligent manner came from north to south and hit the motorcycle on which the petitioner was travelling as a result of which he fell on the road and sustained injuries. The petitioner was a Nurse and was having a monthly income of ₹35,000/- at the time of accident. The 1st respondent is the driver, the 2nd respondent is the owner and the additional 4th respondent is the insurer of the offending car. The petitioner is thus entitled to recover compensation jointly and severally from the respondents.

3. The 1st and 2nd respondents remain exparte. The New India Assurance Company Limited was impleaded as the 3rd respondent alleging that it is the insurer of the offending motorcar. But the petitioner subsequently field IA 4/2023 to implead the additional 4th respondent as the insurer of the offending car.

4. The 3rd respondent filed written statement contending that the policy issued by the 3rd respondent for the car bearing Reg.No.KL 71 G 4506 does not cover third party liability, but only own damage policy. The previous policy issued to the said vehicle was covering third party liability. So the 3rd respondent is not liable to indemnify the 2nd respondent or to pay compensation to the petitioner.

5. The additional 4th respondent filed written statement contending that the petition is bad for non-joinder of necessary parties. The additional 4th respondent is made a party only to vex and harass the additional 4th respondent. The vehicle bearing Reg.No.KL 71 G 4506 was not insured with the additional 4th respondent at the time of accident and the 2nd respondent is a stranger to the additional 4th

respondent. The additional 4th respondent had issued any policy in the name of the 2nd respondent for the vehicle bearing Reg.No.KL 71 G 4506. The petitioner has no cause of action against the additional 4th respondent. The petitioner is liable to pay compensatory cost to the additional 4th respondent. Hence the claim petition is to be dismissed as against the additional 4th respondent.

6. The issues which arise for consideration are:

1. Whether the accident occurred on 09/08/2020 due to the rash and negligent driving of the car as alleged?
2. Whether the petitioner sustained injuries in the accident as alleged?
3. Whether the petitioner is entitled to recover compensation from the respondents? If so what is the quantum of award and from whom to be recovered ?
4. Relief and costs?

7. <u>OP (MV) No. 2389/2020</u>

The petitioner’s case in brief is that on 09/08/2020 at about 2.30 pm the petitioner was tavelling as a pillion rider the motorcycle bearing Reg.No.KL 23 K 1653 from south to north along Azheeckkal Harbour- Azheeckal Junction road and when the motorcycle reached near Azheeckkal Harbour the car bearing Reg.No.KL 71 G 4506 driven by the 1st respondent in a rash and negligent manner came from north to south and hit the motorcycle on which the petitioner was travelling as a result of which he fell on the road and sustained injuries. The petitioner was a Surveyor and was having a monthly income of ₹15,000/- at the time of accident. The 1st respondent is the driver, the 2nd respondent is the owner and the additional 4th respondent is the insurer of the offending car. The petitioner is thus entitled to recover compensation jointly and severally from the respondents.

8. The 1st and 2nd respondents remain exparte. The New India Assurance Company Limited was impleaded as the 3rd respondent alleging that it is the insurer of the offending motorcar. But the petitioner subsequently field IA 4/2023 to implead the additional 4th respondent as the insurer of the offending car.

9. The 3rd respondent filed written statement contending that it is not a necessary party to the claim petition. The 3rd respondent had not issued any policy for the car bearing Reg.No.KL 71 G 4506 covering third party liability, but only Stand -Alone Motor Own Damage Policy. So the 3rd respondent is not liable to indemnify the 2nd respondent or to pay compensation to the petitioner. The accident occurred due to the rash and negligent riding of the motorcycle on which the petitioner was travelling. The petitioner has to prove his age, occupation and income. The petitioner sustained only minor injuries and the injuries have not caused any disability to him. The amount of compensation claimed is exorbitant.

10. The additional 4th respondent filed written statement contending that it had not issued policy for vehicle bearing Reg.No.KL 71 G 4506 involved in the accident. The additional 4th respondent is unnecessarily made party to the claim petition. Hence the claim petition as against the additional 4th respondent is liable to be dismissed. The petitioner has to prove the averments in the claim petition including the age, occupation and income. The amount of compensation claimed is exorbitant. The additional 4th respondent is not liable to pay any compensation tot he petitioner.

11. The issues which arise for consideration are:

1. Whether the accident occurred on 09/08/2020 due to the rash and negligent driving of the car as alleged?
2. Whether the petitioner sustained injuries in the accident as alleged?
3. Whether the petitioner is entitled to recover compensation from the respondents? If so what is the quantum of award and from whom to be recovered ?
4. Relief and costs?

12. Joint trial was conducted in the above cases as per order in IA 7/2025 and OP (MV) 2400/2020 was taken as the leading case.

13. Exts. A1 to A18 and Ext.X1 were marked from the side of the petitioners and Ext.B1 and Ext. B2 were marked from the side of the respondents.

14. Heard both sides.

15. **<u>Issue No. 1 in OP (MV) 2400/2020 & 2389/2020</u>**

The petitioners produced Ext.A1, first information report and first information statement in crime No.1902/2020 of Ochira Police Station and Ext.A6, final report filed by the police after conducting investigation wherein it is stated that on 09/08/2020 at about 2.30 pm the petitioner in OP(MV) 2400/2020 was riding the motorcycle bearing Reg.No.KL 23 K 1653 from south to north along Azheekkal Harbour- Azheeckal Junction road along with the petitioner in OP(MV) 2389/2020 as pillion rider and when the motorcycle reached near Azheeckkal Harbour the car bearing Reg.No.KL 71 G 4506 driven by the 1st respondent in a rash and negligent manner came from north to south and hit the motorcycle on which the petitioners were travelling as a result of which they fell on the road and sustained injuries.

16. It is prima facie evident from Ext.A6, final report that the accident happened due to the rash and negligent driving of the offending car by the 1st respondent. In **New India Assurance Company Ltd. Vs. Pazhaniammal (2011 (3) KLT 648)**, *the Division Bench of the Hon'ble High Court held that* ***as a general rule it can safely be accepted that production of the police charge sheet is prima facie sufficient evidence of negligence for the purpose of a claim under S. 166 of the Motor Vehicle Act.*** In this case as per Ext.A6, final report the police concluded after investigation that the accident in which the petitioner sustained injuries was caused as a result of the rash and negligent driving of the offending vehicle by the 1st respondent. The prima facie proof of negligence on the part of the 1st respondent which is established by Ext.A6, final report is not rebutted by the respondents by adducing contra evidence. *The Hon'ble High Court of Kerala held in* ***Balan.R V. Abhiraj.R and others [2021 (4) KHC 380]*** *that production of police charge sheet is prima facie sufficient evidence to find negligence.* Deviation from police charge is possible only when evidence is adduced to disbelieve the charge sheet, but no evidence is adduced. Hence issue No. 1 is found in favour of the petitioners.

17. **<u>Issue No. 2 & 3 in OP (MV)2400/2020</u>**

Ext.A17, wound certificate issued from the Valiyath Institute of Medical Sciences, Karunagappally would reveal that the petitioner sustained multiple abrasions over face, right hand, lacerated wound right leg, compound fracture right tibia. Ext.A7, discharge summary issued from the Amrita Institute of Medical Sciences and Research Centre, Kochi would reveal that the petitioner was admitted as inpatient in that hospital on 09/08/2020 and was discharged on 24/08/2020 and the diagnosis was type 3A open fracture tibia shaft with tibialis anterior tendon partial tear- right AO 42A3. Ext.A8, discharge summary issued from the Amrita Institute of Medical Sciences and Research Centre, Kochi would reveal that the petitioner was admitted as inpatient in that hospital on 13/11/2023 and was discharged on 16/11/2023 and the diagnosis was united fracture- right tibia shaft- S/P intramedullary nailing right tibia. Ext.A9, treatment certificate issued from the Valiyath Institute of Medical Sciences, Karunagappally would reveal that the petitioner sustained right tibia compound fracture.

18. The petitioner appeared before the Medical Board District Hospital, Mavelikkara for the purpose of assessment of disability. The Medical Board examined the petitioner and issued Ext.X1, disability certificate which would reveal that the petitioner has has permanent disability 12%.

19. The Hon’ble High Court of Kerala held in **Joby George Vs.Sibi Valloran (2024 KHC OnLine 626)** that opinion of Medical Board which is an expert body, must be given due weight, value and credence relying on the dictum laid down by the Hon’ble Apex Court in **Union of India and Another Vs Talwinder Singh [2012 KHC 4241].** Here it is evident from Ext.X1 that the disability of the petitioner was assessed by the Medical Board consisting of the doctors of a Government Hospital and there is no reason to discard the certificate issued by such

a Board. Hence 12% permanent disability is taken into consideration for computing compensation for loss of earning power on account of permanent disability.

20. The petitioner's case is that he was a Nurse and was having a monthly income of ₹35,000/- at the time of accident. It is evident from Ext.A15, certificate that the petitioner had been working at Amrita Institute of Medical Sciences and Research Centre, Kochi as full time Registered Nurse. But there is no evidence to prove the income of the petitioner. So the monthly income of the petitioner is fixed at ₹25,000/- notionally.

21. It is evident from Ext.A18, copy of Pan Card that the date of birth of the petitioner is 05/01/1986 and that the petitioner was aged 34 years at the time of accident and in view of the decision reported in **Sarla Varma and others V. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** multiplier 16 is adopted for computing compensation for permanent disability as the petitioner was in the age group of 31-35 years at the time of accident. 40% of the income is added as future prospects to the income of the petitioner. Thus compensation for loss of earning capacity on account of permanent disability of the petitioner is calculated as follows:

25000+(25000x40%)x12 x16x12% = **₹8,06,400/-.**

22. Considering the nature of injuries sustained by the petitioner he might have been incapacitated to do his works for six months. Hence towards loss of earning the petitioner is entitled to get compensation of **₹1,50,000/-** (₹25,000/- x 6 months). Considering the nature of the injuries sustained by the petitioner and the pain and suffering undergone by him it is reasonable to award an amount of

₹60,000/- as compensation for pain and suffering and an amount of **₹45,000/-** as compensation for loss of amenities. It is reasonable to award an amount of ₹**3,000/-** towards damage to clothing, an amount of ₹**10,000/-** towards extra nourishment, an amount of ₹**10,000/-** towards transport to hospital and an amount of ₹**10,000/-** (500x20) towards bystander’s expenses. The petitioner claims an amount of ₹2,00,000/- towards medical expenses and an amount of ₹**2,66,566/-** is awarded based on Ext.A16, medical bills. The petitioner claims an amount of ₹50,000/- towards future treatment expenses, but there is no evidence to show that future treatment is required and hence no amount is awarded under that head.

The table of compensation advanced by the petitioner and awarded by the Tribunal is given below.

Sl. No.	Head of Claim		Amount Awarded
a	Loss of earning	2,10,000/-	**1,50,000/-**
b	Partial loss of earning	25,000/-	
c	Transport to hospital	25,000/-	**10,000/-**
d	Extra nourishment	10,000/-	**10,000/-**
e	Damage to clothing and articles	5,000/-	**3,000/-**
f	Others: (1) Medicine (2) Bystander expenses	2,00,000/- 5,00,000/-	**2,66,566/-** **10,000/-**
	Compensation for pain and sufferings	2,00,000/-	**60,000/-**
g.	Compensation continuing or permanent disability if any Compensation for loss of earning power	12,00,000/-	**8,06,400/-**
h	Compensation for loss of amenities	2,50,000/-	**45,000/-**
i.	Future treatment expenses	50,000/-	

		₹22,25,000/- (Limited to ₹20,00,000/-)	**₹13,60,966/-**
(Rupees Thirteen Lakhs Sixty Thousand Nine Hundred and sixty Six only)			

23. According to the petitioner the offending vehicle had valid insurance coverage with the additional 4th respondent at the time of accident. It is contended by the additional 4th respondent that the vehicle bearing Reg.No.KL 71 G 4506 was not insured with the additional 4th respondent at the time of accident. Though the 3rd respondent the insurance company is still in the party array it has raised a contention that the policy issued by the 3rd respondent for the car bearing Reg.No.KL 71 G 4506 does not cover third party liability, but only own damage policy. It is evident from Ext.B2 produced by the 3rd respondent that the 3rd respondent had issued stand alone Motor Own Damage Policy only for the car bearing Reg.No.KL 71 G 4506. The petitioner has not adduced any evidence to prove that the offending car was insured either with the 3rd respondent or with the additional 4th respondent at the time of accident. So the respondents 1 and 2 being the driver and owner respectively of the offending car are jointly and severally liable to compensate the petitioner and issue No.2 & 3 are found in favour of the petitioner accordingly.

24. **<u>Issue No. 2 & 3 in OP (MV) 2389/2020</u>**

Ext.A2, wound certificate issued from the Star Nursing home, Oachira would reveal that the petitioner sustained abrasion over left knee 2cmx1 ½ cm, fracture terminal phalanx 2nd toe left foot.

25. The petitioner's case is that he was a Surveyor and was having a monthly income of ₹15,000/- at the time of accident. But there is no evidence to prove the occupation and income of the petitioner. So the monthly income of the petitioner is fixed at ₹15,000/- notionally.

26. Considering the nature of injuries sustained by the petitioner he might have been incapacitated to do his works for six months. Hence towards loss of earning the petitioner is entitled to get compensation of **₹90,000/-** (₹15,000/- x 6 months). Considering the nature of the injuries sustained by the petitioner and the pain and suffering undergone by him it is reasonable to award an amount of **₹60,000/-** as compensation for pain and suffering and an amount of **₹45,000/-** as compensation for loss of amenities. It is reasonable to award an amount of ₹**3,000/-** towards damage to clothing, and an amount of ₹**1,000/-** towards transport to hospital. The petitioner claims an amount of ₹5,000/- towards medical expenses, but no medical bill is produced and hence no amount is awarded under that head. The petitioner claims an amount of ₹15,000/- towards future treatment expenses, but there is no evidence to show that future treatment is required and hence no amount is awarded under that head.

The table of compensation advanced by the petitioner and awarded by Tribunal is given below.

Sl. No.	Head of Claim	Amount Claimed	Amount Awarded
a	Loss of earnings	50,000/-	**90,000/-**
b	Partial loss of earnings	25,000/-	
c	Transport to hospital	10,000/-	**1,000/-**

d	Damage to clothing and articles	1,000/-	**3,000/-**
e	Extra nourishment	10,000/-	
f	Other expenses		
g	Others: (1) Medicine (2) Bystander expenses	5,000/- 2,000/-	
i	Compensation for pain and sufferings	50,000/-	**60,000/-**
j	Compensation continuing or permanent disability if any Compensation for loss of earning power	1,50,000/-	
k.	Loss of amenities	305,000/-	**45,000/-**
	Future treatment	15,000/-	
		₹3,46,000/- (Limited to ₹3,00,000/-)	**₹1,99,000/-**
			(Rupees One Lakh and Ninety Nine Thousand only)

27. According to the petitioner the offending vehicle had valid insurance coverage with the additional 4th respondent at the time of accident. It is contended by the additional 4th respondent that it had not issued policy for vehicle bearing Reg.No.KL 71 G 4506 involved in the accident. Though the 3rd respondent the insurance company is still in the party array it has raised a contention that it had not issued any policy for the car bearing Reg.No.KL 71 G 4506 covering third party liability, but only Stand -Alone Motor Own Damage Policy. It is evident from Ext.B1 produced by the 3rd respondent that the 3rd respondent had issued stand

alone Motor Own Damage Policy for the car bearing Reg.No.KL 71 G 4506. the petitioner has not adduced any evidence to prove that the offending car was insured either with the 3rd respondent or with the additional 4th respondent at the time of accident. So the respondents 1 and 2 being the driver and owner respectively of the offending car are jointly and severally liable to compensate the petitioner and issue No.2 & 3 are found in favour of the petitioner accordingly.

28. **<u>Issue No.4: in OP (MV) No.2400/2020</u>**

In the result, OP is allowed in part and award is passed in favour of the petitioner as follows :

1. The Petitioner is entitled to recover an amount of **₹13,60,966/- (Rupees Thirteen Lakhs Sixty Thousand Nine Hundred and Sixty Six only)** with 9% interest per annum thereon from the date of filing of the original petition, ie, from 23/12/2020 till date of realization and proportionate costs from the 1st and 2nd respondents jointly and severally.

2. The 1st and 2nd respondents are directed to produce crossed cheque for ₹19,373/- towards court fee and for ₹20,000/- towards legal benefit fund in favour of the Motor Accident Claims Tribunal, Kollam.

3. The 1st and 2nd respondents are directed to deposit the balance award amount after deducting the court fee and the amount towards legal benefit fund directly by NEFT or RTGS or any other electronic mode to the credit of the bank account of the Motor Accident Claims Tribunal, Kollam maintained with the State

Bank of India, Civil Station Branch, Kollam with Account No.**42796965391** (IFSC Code SBIN0070053, MICR Code 691002903).

4. The bank account details of the petitioner are given below:-

The Dhanalxmi Bank, Edappally Branch, IFSC Code No. DLXB0000155, MICR Code 682048012, Account Number 015500900004211.

PANCARD No. HDRPS7601N.

5. Office shall issue free copy of the award to the petitioner and the 3rd and additional 4th respondents forthwith.

29. **Issue No. 4. in OP (MV) No.2389/2020**

In the result, OP is allowed in part and award is passed in favour of the petitioner as follows :

1. Petitioner is entitled to recover an amount of **₹1,99,000/- (Rupees One Lakh and Ninety Nine Thousand only)** with 9% interest per annum thereon from the date of filing of the original petition, ie, from 23/12/2020 till date of realization and proportionate costs from the 1st and 2nd respondents jointly and severally.

2. The 1st and 2nd respondents are directed to produce crossed cheque for ₹2,373/- towards court fee and for ₹3,000/- towards legal benefit fund in favour of the Motor Accident Claims Tribunal, Kollam.

3. The 1st and 2nd respondents are directed to deposit the balance award amount after deducting the court fee and the amount towards legal benefit fund directly by NEFT or RTGS or any other electronic mode to the credit of the bank account of the Motor Accident Claims Tribunal, Kollam maintained with the State Bank of India,

Civil Station Branch, Kollam with Account No.**42796965391** (IFSC Code SBIN0070053, MICR Code 691002903).

4. The bank account details of the petitioner are given below:-

The Canara Bank, Oachira Branch, IFSC Code CNRB0003583, MICR Code 690015252, Account Number 110059024422.

5. Office shall issue free copy of the award to the petitioner and the 3rd and additional 4th respondents forthwith.

(Dictated to Confidential Assistant transcribed and typed by her corrected and pronounced by me in open court this the 1st day of August, 2025.)

Sd/-
Prasanna Gopan
Motor Accident Claims Tribunal, Kollam.

Appendix:

Exhibits for the Petitioner:-

A1	10.08.2020	Copy of FIR & FIS
A2	10.08.2020	Copy of Wound Certificate
A3	11.08.2020	Copy of Scene Mahazer
A4	13.08.2020	Copy of Vehicle Mahazer
A5	13.08.2020	Copy of AMVI Report
A6	02.11.2020	Copy of Final Report
A7	24.08.2020	Discharge summary
A8	16.11.2023	Discharge summary
A9	-	Treatment Certificate
A10	-	Copy of Mark list (Karnataka State Diploma in Nursing Examination Board)
A11	-	Copy of Course Certificate (General Nursing & Mid wifery)
A12	12.07.2010	Copy of Registration Certificate
A13	18.06.2010	Copy of Completion certificate
A14	-	Copy of Passport
A15	28.08.2014	Copy of Still working Certificate
A16	-	Medical Bills
A17	09.08.2020	Copy of Wound Certificate
A18	-	Copy of Pancard

Exhibits for the Respondents :

B1 : Copy of Policy
B2 : Copy of Policy

Third Party Exhibits :

X1 : 18.01.2023 : Disability Certificate

Witness examined for both sides : Nil

Id/-
Motor Accident Claims Tribunal

Note as per Rule 7(2) of destruction of records Rules 2004.(“ The parties should apply as soon as possible for the return of all documents which they may wish to preserve, as the record will be liable to be destroyed twelve years from this date”).
Data Entry By : Bindu. P.
Compared By : Binu.R

MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

Memo of Cost

<u>OP(MV) No. 2400/2020</u>

1.	Court fee	₹ 19,373/-
2.	Legal Benefit Fund	₹ 20,000/-
3.	Vakkalath fee	₹ 6/-
4.	Process fee	₹ 120/-
5.	Stamp for Exhibits	₹ 90/-
6.	Petition fee	₹ 5/-
7.	Writing Fee	₹ 500/-
8.	Advocate Fee	₹ 70,448/-
	Total	₹ 1,10,542/- ==========
	Proportionate Cost	$\frac{13,60,966}{20,00,000}$ x1,10,542 = 75,221/-

(Rupees Seventy Five Thousand Two Hundred and Twenty one only)

Id/-
Motor Accident Claims Tribunal