

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA

Present: Sri.A.V.Unnikrishnan, Motor Accidents Claims Tribunal, Kalpetta

Saturday, this the 30th day of May, 2026
09th day of Jyaishta, 1948

ORIGINAL PETITION (MV) No. 882/2024

Between:

Gopalakrishnan T.D., Aged 58 years,
S/o Damodaran, Thottumpurath House,
Choothupara Post, Purakkadi Village,
Sulthan Bathery Taluk, Wayanad District,
Pin - 673 596.

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Petitioner

And:

R1. Basil K John, Aged 27 years, S/o John,
Kuttikkattil House, Cheeyambam Post,
Irulam, Sulthan Bathery Taluk,
Wayanad District, Pin - 673 579.

(Driver of the KL-12 A-4743 Jeep)

R2. Yadhukrishna, Age about 40 years,
S/o Viswambaran, Ayyamkuzhakkal
House, Cheeyambam Post, Irulam,
Sulthan Bathery Taluk, Wayanad District,
Pin - 673 579.

(Owner of the KL-12A-4743 Jeep)

R3. The Branch Manager, United India
Insurance Co.Ltd., Vinayaka Shopping
Complex, Temple Road, Pulpally,
Sulthan Bathery Taluk, Wayanad District,
Pin - 673 579.

(Insurer of the KL-12 A-4743 Jeep)

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Respondents

This OP(MV) is coming on this the 04th day of May, 2026 for final hearing before me in the presence of Sri.T.R.Balakrishnan and Sri.V.N.Sajimon, Counsels for petitioner, Smt.Amrutha P.Nair, Counsel for respondent Nos.1&2 and Sri.P.C.Prasad, Counsel for respondent No.3 and having stood over for consideration to this day, the Tribunal passed the following.

A W A R D

This is a petition filed U/s.166(1)(a) of the Motor Vehicles Act, 1988.

2. Case of the petitioner in brief is as follows :- At the time of the accident, the petitioner was a Security Chief Supervisor at Harithagiri Hotel, Kalpetta, aged 58 years and was earning a monthly income of ₹22,000/-. On 06.10.2024, at about 6.00 pm, while the petitioner was riding the motorcycle bearing Reg.No.KL-73A-8905, along the Paplassery – Moonanamkuzhi Public Road, at a place near Paplassery town, a Jeep bearing Reg.No.KL-12A-4743, coming from Moonanamkuzhi side, knocked down the Jeep ridden by the petitioner, and thereby he sustained grievous injuries. R1 was the driver of the Jeep bearing Reg.No.KL-12A-4743, who drove it in a rash and negligent manner and caused the accident. R2 is the owner and R3 is the insurer. On account of the accident, petitioner suffered huge loss to the tune of ₹20 lakh/-. Petitioner is claiming compensation jointly and severally from the respondents.

3. On receipt of the summons, R1 to R3 appeared through counsels and filed written statements.

4. R1 and R2 filed joint written statement contending as follows :- It is admitted by R1 and R2 that they were the driver and owner respectively of the Jeep bearing Reg.No.KL-12A-4743 involved in the accident. It is contended that the accident occurred not due to the rashness and negligence of R1. It is also contended that the vehicle was insured with R3. Hence, compensation if any is to be recovered from R3.

5. R3 filed written statement contending as follows :- R3 admitted that the Jeep bearing Reg.No.KL-12A-4743 involved in the accident was validly insured with them at the time of accident. It is contended by R3 that, the accident occurred not due to the negligence of R1. It is also contended that at the time of the accident R1 had valid driving license. It is further contended that the insured vehicle had no valid fitness certificate or permit at the time of the accident. Without prejudice to this contention, it is further stated that the age, nature of injury, period of treatment and expenses as narrated in the petition are not correct and hence denied. The petitioner has to prove these aspects with strict proof. For the reasons stated above prays to dismiss the petition.

6. The following issues were framed for consideration:

- 1 Whether the accident was due to negligence of respondent No.1?
- 2 Whether the petitioner sustained injuries as alleged?
- 3 Whether the petitioner is entitled to get compensation and if so who is liable to pay the same?
- 4 If issue Nos.1 to 3 are answered in favour of the petitioner what is the quantum of compensation entitled by the petitioner?
- 5 Reliefs and costs?

7. On the side of the petitioner, PWs.1 and 2 are examined and Exts.A1 to A12 and Ext.C1 are marked. Ext.B1 is marked on the side of R3. Ext.X1 series are marked as court exhibit.

8. Heard both sides.

9. **Issue No.1:-** In the written statement filed by the R3 it is contended that the accident was occurred not due to the rashness and negligence of

R1. Apart from taking such a contention in the written statement, R3 has not produced any evidence to prove said contention. Now, it is settled legal position as held by the Hon'ble High Court of Kerala in *New India Assurance Co. v. Pazhaniammal and others (2011 (3) KLT 648)* and in *Kolavan and Others V. Salim and Others (2018 (1) KLT 489)*. It is held by the Honourable High Court of Kerala, that, *unless otherwise proved the finding arrived at by the Investigation Officer, after due process of investigation can be accepted as to find out upon whom the negligence can be attributed*. In the case at hand, copy of the FIR is marked as Ext.A1. As per Ext.A1, the accident was on 06.10.2024 and the FIR was registered on 07.10.2024. Ext.A5 is the Final Report submitted by the Senior Civil Police Officer, Kenichira Police Station. Going by Ext.A5 final report it can be seen that, the investigating officer upon conclusion of his investigation charge sheeted the R1, the driver of the offending vehicle for commission of offences punishable under sections 281 & 125(b) of the BNS. The Investigating Officer after due process of investigation found that the R1 being the driver of the Jeep bearing registration No.KL-12A-4743 drove it in a rash and negligent manner caused the accident. I find nothing to disbelieve the findings of the investigating officer. From the material available before me, I am of the opinion that the petitioner succeeded in proving that cause of the accident was rashness and negligence of R1, the driver of the Jeep bearing Reg.No.KL-12A-4743. This issue is found in favour of the petitioner.

10. **Issue No.2** :- In the written statement filed by the R3, the accident in which the petitioner sustained injuries stands admitted. R3 in their written statement admitted that, the Jeep bearing Reg.No.KL-12A-4743 is validly insured with them.

11. Ext.A4 is the copy of the wound certificate issued from Iqraa Hospital, Sulthan Bathery. As per Ext.A4, the petitioner sustained the following injuries.

- i. Open fracture type IV right leg .
- ii. Multiple abrasion over left hand.
- iii. Large swelling and deformity over right foot.

12. The admission of R3 in their written statement and the Exts.A1, A4 and A5 will prove that the petitioner sustained injuries in an accident as stated in the petition. This issue is found in favour of the petitioner.

13. **Issue Nos.3 & 4** :- According to the petitioner, at the time of the accident, he was working as a security supervisor in a hotel, and was earning a monthly income of ₹22,000/-. To prove this, petitioner was examined as PW1. When mounted the box, he stated in the proof affidavit that his monthly income was ₹25,000/-, and after the accident, he was removed from the job. In cross examination, no question is asked disputing the income and occupation claimed by the petitioner. Ext.A8 is the salary certificate issued from Mahindra Security & Hospitality Services stating that the monthly income of the petitioner is ₹25,000/-. Said document is not proved by examining the person who issued the same. Even though PW1 adduced evidence that his monthly income was ₹25,000/-, his pleaded case is that his monthly income was ₹22,000/-. I am of the opinion that ₹22,000/- can be taken as the monthly income of the petitioner.

14. Ext.A4 is the copy of the wound certificate issued from Iqraa Hospital, Sulthan Bathery. Ext.A7 is the discharge summary issued from Baby Memorial Hospital, Kozhikode. As per Ext.A7, the petitioner was admitted in that

hospital on 06.10.2024 and was discharged on 16.10.2024 (11 days) diagnosed with grade III open fracture proximal tibia (with articular depression and fibula right), patellar tendon injury right, gross muscle injury right, and distal based skin flap right. At the hospital, the petitioner had under gone operative procedure for internal fixation.

15. Ext.C1 is the report of Medical Board issued from District Medical Board, District Hospital, Mananthavady, which assessed the permanent disability as 25% with respect to right lower limb. The Medical Board found that the petitioner has right knee 0-110°, power grade V, weight bearing partial, squatting nil, slope walking nil, pain plus.

16. Upon considering the nature of the injuries sustained to the petitioner and the period for which he was treated as inpatient and the disability suffered by him, I am of the opinion that petitioner is entitled to get a sum of **₹60,000/-** as compensation for pain and sufferings. Towards loss of amenities, **₹25,000/-** is allowed.

17. As per Ext.A7, petitioner was treated as an inpatient for a total period of 11 days. I am of the opinion that petitioner is entitled to get bystander expenses at the rate of **₹600/-** per day which will come to **₹6,600/-** (600x11).

18. Towards extra nourishment, the petitioner is entitled to get **₹6,600/-** (600x11).

19. Towards damage to clothing and articles, the petitioner is entitled to get a sum of **₹3,000/-**.

20. Upon considering the nature of the injuries sustained to the petitioner, I am of the opinion that injured might not have worked for 6 months after the accident, and he is entitled to get an amount of ₹1,32,000/- (22000x6) towards loss of earnings.

21. Towards transportation expenses, the petitioner produced Ext.A9 series ambulance bills for a sum of ₹55,854/-. These bills are opposed by the learned counsel for R3. Hence, marked subject to proof. No steps were taken to prove Ext.A9 series. Considering the nature of the injuries, I am of the opinion that, a sum of ₹40,000/- is awarded towards the head transportation expenses.

22. Ext.X1 series are the medical bills called for from the hospital. Ext.X1 series are for ₹2,07,805/-. It has been proved through PW2, the General Manager of Baby Memorial Hospital, Kozhikode. Learned counsel for R3 contended that failure of the petitioner to produce the original bills will go to show that the petitioner might have claimed medical insurance benefit, and hence, the petitioner cannot claim that amount. The Hon'ble Supreme Court in **New India Assurance Company vs Dolly Satish Gandhi reported in 2026 INSC 498**, held that, *medical reimbursement received under a medical insurance policy cannot be deducted from the compensation granted under the Motor Vehicles Act*. I am of the opinion that the amount covered by Ext.X1 series i.e., ₹2,07,805/- is awarded under the head medical expenses.

23. Ext.C1 is the report of Medical Board issued from District Medical Board, District Hospital, Mananthavady, which assessed the permanent disability as 25% with respect to right lower limb. *In Raj Kumar v Ajay Kumar 2011(1) SCC 343*, it is held by the Hon'ble supreme Court that, "the percentage of

*permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of the loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability)”. With respect to right lower limb, if the disability applied to the whole body, it will come 15%. Considering the nature of the injury of the petitioner, I am of the opinion that occupational disability of the petitioner is taken as **12%**.*

24. Ext.A12 is the copy of PAN card of the petitioner. As per Ext.A12, date of birth of the petitioner is 01.06.1966. The date of accident was on 06.10.2024. Age of the petitioner at the time of the accident was 58 years. Since the petitioner is a self employed aged above 49, an enhancement of 10% is to be added to the monthly income for future prospects as per the dictum in ***National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157***. Accordingly the monthly income of the petitioner is arrived as ₹24,200/- (22000+10% of 22000). Considering the age of the petitioner, the applicable multiplier is '9' as per the dictum in ***Sarla Verma and Others Vs Delhi Transport Corporation and another reported in AIR 2009 SC 3104***. The compensation for continuing and permanent disability will come to **₹3,13,632/-** (24200x12x9x12/100). That amount is allowed.

25. **Now the next question is who shall pay the compensation.** While discussing issue No.1, I have already come to a conclusion that the accident was occurred due to the rashness and negligence of R1, the driver of the Jeep

bearing Reg.No.KL-12A-4743. In the written statement R3 took a contention that at the time of the accident R1 had no valid driving license. To substantiate this contention, R3 filed IA 3/2025 seeking production of the driving license of R1, and fitness certificate and permit of the insured vehicle. In response to the IA, R1 produced the copy of his driving license. Further, as per the insurance policy, the insured vehicle was a private vehicle. Recording to the above fact, IA was closed. R3 filed another IA as 7/2025 seeking production of the registration certificate of the insured vehicle as to prove that there was no valid registration for the vehicle at the time of the accident. Even though an order was passed directing R2 to produce the registration certificate, it has not been produced. In the written statement R3 had no case that the insured vehicle had no registration. In such circumstances, merely because R2 failed to produce the registration certificate an adverse inference can not be drawn. Hence, there is no merit in the contention of R3 that there is a fundamental breach of policy condition. In such circumstances R2 and R3, the owner and insurer respectively of the offending vehicle are jointly and severally liable to pay the compensation amount. Since R3 is the insurer of the vehicle, R3 shall pay the compensation for and on behalf of R2. These issues are found in favour of the petitioner.

SUMMARY OF CLAIMS RAISED AND ALLOWED

Sl. No.	Head of claim	Amount claimed in ₹	Amount awarded in ₹	Basis
PART -				
1	Loss of earning (Total)	22,000	1,32,000	22000x6
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	5,00,000	2,07,805	Ext.X1(s)
4	Future treatment	0	0	Nil

5	Bystander expenses	25,000	6,600	600x11 days
6	Transportation expenses	20,000	40,000	Ext.A9 (s) marked subject to proof
7	Extra nourishment	20,000	6,600	600x11 days
8	Damage to clothing, etc	3,000	3,000	Nil
9	Pain and suffering	2,00,000	60,000	Considering nature of injuries
10	Loss of earning power	2,00,000	0	Nil
11	Loss of amenities and conveniences , etc	1,00,000	25,000	Nil
12	Compensation for continuing/ permanent disability	10,00,000	3,13,632	24200x12x9x12/100
13	Compensation for loss of expectation of life	1,00,000	0	Nil
14	Loss of earning power	0	0	Nil
15	Inconveniences, hardship, discomfort, disappointment, frustration and mental stress in life	0	0	Nil
16	Compensation for shortened expectation of life	0	0	Nil
17	Compensation for disfiguration	0	0	Nil
	Total	₹21,90,000/- rounded to ₹20 lakh	₹7,94,637/- rounded to ₹7,94,640/-	

26. **Issue No.5** :- In view of the above findings, the petitioner is entitled for a sum of **₹7,94,640/- (Rupees Seven lakh Ninety four thousand Six hundred and Forty only)** as compensation. The petitioner is entitled to realise an amount of **₹7,94,640/-** as compensation from **R3** with interest at the rate of 8% per annum from the date of petition i.e., **13.12.2024** till realisation with proportionate costs. This issue is found in favour of the petitioner.

In the result,

- 1 An award is passed for **₹7,94,640/- (Rupees Seven lakh Ninety four thousand Six hundred and Forty only)** with interest @ 8% per annum from the date of filing of the petition i.e., **13.12.2024** till realisation with proportionate costs.
- 2 **R3** is directed to furnish cheques for **₹19,373/-** towards Court Fee and **₹20,000/-** towards Legal Benefit Fund payable by the petitioner, in favour of MACT, Kalpetta.
- 3 **R3** shall deposit **₹5 lakh** with proportionate costs and interest directly to the bank account of petitioner **stated in Ext.A11 (A/c No.0827119033239 IFSC : CNRB0000827)** within one month from the date of award by way of electronic funds transfer, which the petitioner shall be at liberty to withdraw.
- 4 For the balance amount create a Fixed Deposit in the name of the petitioner for two years which shall have a lien marked on the face of the receipt stating that the amount shall be repaid only on maturity by automatically crediting it with interest to the petitioner's account or else, only on the orders of the Tribunal/High Court. This shall be done within one month from the date of order.
- 5 Immediately when the payments as afore stated are made, **R3** shall file a statement before the Tribunal, regarding compliance of the order along with a copy of the transaction records certified by the Bank concerned which will be countersigned and issued to the petitioner by the Tribunal.

6 Office shall make necessary entries in the registers of the Tribunal, evidencing payment of the amount to the petitioner.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 30th day of May, 2026).

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses :

PW1- 27/03/2026 Gopalakrishnan T.D

PW2- 24/04/2026 Mohanan A.

Petitioner's Exhibits :

A1- 07/10/2024 Copy of First Information Report & FIS
A2- 08/10/2024 Copy of Scene Mahazar
A3-series 23/10/2024 Copy of AMVI Reports
A4- 06/10/2024 Copy of Accident Register cum Wound Certificate
A5- 07/10/2024 Copy of Final Report
A6- - Copy of Policy
A7- 16/10/2024 Copy of Discharge Summary
A8- 20/08/2025 Salary Certificate
A9-series - Ambulance Bills
A10- 07/11/2011 Copy of Aadhar Card
A11- 24/11/2011 Copy of Bank Pass Book
A12- - Copy of PAN Card

Respondents' Witnesses : Nil

Respondents' Exhibits :

B1- - Copy of Insurance Policy

Court Witnesses :

Nil

Court Exhibits :

C1- 10/06/2025 Medical Certificate issued by District
Medical Board, Wayanad

X1-series - Medical Bills

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Sadeesh.K
Compared by : Kalesh R.
FCS :

<u>FAIR AWARD IN OP (MV)</u> No.882/2024	
<u>Dated: 30/05/2026</u>	
Court fee paid on	:
Award ready on	:
Date notified for appearance to receive the copy	:
Date when copy delivered	:
FAIR COPY SUPERINTENDENT	
Note:	“The parties should apply as soon as possible for the return of all documents which they may wish to preserve as the record will liable to be destroyed after twelve years from this date”.