

IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA

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

Thursday, this the 26th day of March, 2026
05th day of Chaithra, 1948

ORIGINAL PETITION (MV) No.896/2023

Between:

Anfas Roshan P.A. (minor), S/o Ashraf P.A,
Aged 9 years, Puthupparambil House,
Perikkalloor, Perikkalloor Post,
Pulpally amsom and desom, Pulpally,
Sulthan Bathery Taluk,
Wayanad District - 673 579.

Represented by guardian and next friend Asharaf
P.A, S/o Abdurahiman, Aged 46 years,
Puthupparambil House, Perikkalloor,
Perikkalloor Post, Pulpally amsom and desom,
Pulpally, Sulthan Bathery Taluk, Wayanad
District – 673 579.

Petitioner

And:

R1. Jennis Thomas, S/o Thomas, Aged 47 years,
Vechu vettikkal House, Perikkalloor Post,
Pulpally amsom and desom,
Sulthan Bathery Taluk, Wayanad District,
Pin - 673 579.

***(Rider of the vehicle No. KL-07-CL-9989
TVS Apache)***

R2. Sanish Thomas, S/o Thomas,
Vechu vettikkal House, Perikkalloor Post,
Pulpally amsom and desom,
Sulthan Bathery Taluk, Wayanad District,
Pin - 673 579.

***(Owner of the vehicle No. KL-07-CL-9989
TVS Apache)***

R3. United India Insurance Company Ltd,
Kalpetta Arcade, 2nd Floor, Near New Bus Stand,
Kalpetta - 673 121.

***(Insurer of the vehicle No. KL-07-CL-9989
TVS Apache)***

Respondents

This OP(MV) is coming on this the 26th day of February, 2026 for final hearing before me in the presence of Smt. Sheeba Mathew. K & Sri. Jibin M. S, Counsels for petitioner, and Sri. P.C. Prasad, Counsel for respondent No.3 and respondent Nos. 1&2 remained absent and set exparte and having stood over for consideration to this day, the Tribunal passed the following.

AWARD

This petition is filed by the minor named Anfas Roshan, aged 9 years represented his next friend-mother under **Section 164(1)** of the Motor Vehicles Act 1988.

2. Case of the petitioner in brief is as follows :- At the time of the accident, petitioner was a student, aged 9 years. On 26.09.2022, at about 3.50pm, while the petitioner was crossing the public road at Chettan Kavala, a motorcycle bearing Reg.No.KL-07-CL-9989, going along Pulpally – Perikalloor public road, ridden by R1 in a rash and negligent manner, knocked down the petitioner and thereby the petitioner sustained grievous injuries. R1 was the rider of the motorcycle bearing Reg.No.KL-07-CL-9989, who rode it in a rash and negligent manner and caused the accident. R2 is the owner and R3 is the insurer. Petitioner is claiming compensation of **₹2,50,000/-** jointly and severally from the respondents.

3. Originally the petition is filed U/s 166(1)(a) of the Motor Vehicles Act. Later OP(MV) was converted to one U/s. 164 of Motor Vehicles Act. Petitioner is claiming a compensation of **₹2,50,000/-** jointly and severally from the respondents.

4. On receipt of the summons, R1 and R2 remained absent and set exparte. R3 appeared through counsel and filed written statement.

5. R3 filed written statement contending as follows :- R3 admitted that the motorcycle bearing Reg.No.KL-07-CL-9989 involved in the accident was validly insured with them at the time of accident. It is contended by R3 that the accident was occurred not due to the negligence of R1. It is also contended that the petitioner sustained no grievous injuries. It is further contended that the OP(MV) is barred by law of limitation. Without prejudice this contention, it is further stated the compensation claimed is highly excessive. For the reasons stated above prays to dismiss the petition.

6. After the amendment R3 filed an additional written statement contending that the petition under Section 164 of the Motor Vehicles Act is not maintainable, since the police charge sheeted R1, no fault liability claim under Section 164 is not maintainable.

7. The following issues were framed for consideration:

- 1 Whether the petitioner sustained grievous hurt in the accident arose out of the use of Motor vehicle?
- 2 Whether the petitioner is entitled to get compensation u/s 164 of the Motor Vehicles Act, 1988 and if so, what is the quantum ?
- 3 Who is liable to pay compensation to the petitioner?
- 4 Reliefs and costs?

8. Both sides reported no oral evidence. On the side of the petitioner Exts.A1 to A13 are marked. No evidence is produced on the side of the respondents.

9. Heard both sides.

10. Issue Nos. 1 to 3 :- As per Ext.A5 final report, accident in question was occurred due to the rashness and negligence of R1. Petitioner is claiming compensation under Section 164 of the Motor Vehicles Act. Section 164 is a special provision dealing with the payment of compensation in case of death or grievous hurt of third party by the owner of motor vehicle and authorised insurer, notwithstanding anything contained in the Motor Vehicles Act. In other words, injured with grievous hurt or the legal heirs of deceased in an accident are entitled to get a fixed compensation even without proving negligence on the part of the driver of the vehicle. Even in a case where the driver of the vehicle who was negligent and caused the accident also claim u/s 164 of Motor Vehicles Act is maintainable.

11. It is contended by R3 that, the accident was not due to the negligence of R1. While deciding similar contentions in a case under section 163(A) of pre-amended Act, the **Honourable Supreme Court in United India Insurance Company Ltd. Vs Sunilkumar and another** reported in AIR 2017 SC 5710 held that *“though aforesaid section of Motor Vehicles Act does not specifically exclude a possible defence of Insurer based on negligence of claimant*

as contemplated by section 140(4), to permit such defence to be introduced by insurer and/or to understand provisions of section 163 A of the Motor Vehicles Act to be contemplating any such situation would go contrary to very legislative object behind introduction of 163A of the Motor Vehicles Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where claims of compensation on the basis of fault liability was taking an unduly time. In fact, to understand section 163 A of the Motor Vehicles Act to permit insurer to raise the defence of negligence would be to bring a proceeding under section 163(A) of the Motor Vehicles Act at par with proceeding under section 166 of Motor Vehicles Act which would not only be self contradictory but also defeat legislative intention". I am of the opinion that law laid by the Honourable Supreme Court in the above mentioned decision is equally applicable to claim u/s 164 of the Motor Vehicles Act.

12. In the written statement filed by R3, the accident in which the petitioner sustained injuries stands not denied. Further, it is admitted by R3 that the motorcycle bearing Reg.No.KL-07-CL-9989 involved in the accident was validly insured with them.

13. Coming to the facts of the case Ext.A3 is the copy of wound certificate issued from Dr. Moopen's Hospital, Meppadi. As per Ext.A3, the petitioner sustained upper incisor dislodged and leg externally rotated. Ext.A7 is the copy of discharge summary issued from the same hospital. As per Ext.A7, the petitioner sustained united fracture of mid-third shaft of femur left with implant

insitu. That being the case, the injury sustained to the petitioner is grievous within the meaning of Section 116 of BNS and Section 320 of IPC. As the petitioner sustained grievous injuries, he is entitled to get fixed compensation of ₹2,50,000/- as stipulated in section 164 of the Motor Vehicles Act.

14. **Now the next question is who shall pay the compensation.** While discussing issues No.1 to 3, I have already come to a conclusion that the petitioner sustained grievous hurt in a road traffic accident in which the insured vehicle bearing Reg.No.KL-07-CL-9989 was involved. In the written statement R3 took a contention that the OP(MV) is barred by law of limitation. The accident in question was on 26.09.2022 and the OP(MV) was 'e' filed on 05.12.2023. That means, OP(MV) was filed apparently beyond six months from the date of accident. In the decision laid down by the Honourable High Court of Kerala in **Vijayan Vs Manoj K. reported in 2023 KHC 2864** considered the question whether the period of limitation prescribed under section 166 (3) of the Motor Vehicles Act is applicable to a claim petition filed under section 164 of the Motor Vehicles Act, In paragraph 5 it is held that *“prior to the amendment clause of the Motor Vehicles Act, section 163(A) was in vogue for filing the claim petition on the basis of no fault liability prescribed in the structured formula. Section 164 is pari materia to the aforementioned provision. The act opens with non obstante clause and therefore the provision of sub section (3) of section 166 would not have come in to the way of the petitioners for the purpose of prescribing the OPMV preferred on 25.10.2022”*. Interpretation of law made by Honourable High Court of Kerala, I find that no

merit in the contention of the learned counsel for R3 that OP(MV) is barred by law of limitation. In such circumstances, R2 the owner of the offending vehicle and R3 being the insurer of the offending vehicle are jointly and severally liable to pay fixed compensation of ₹2,50,000/- (**Rupees Two lakh Fifty thousand only**) u/s 164 of the Act. R3 being insurer shall pay compensation for and on behalf of R2. These issues are answered accordingly.

15. **Issue No.4**:- In view of the above findings, the petitioner is entitled for a sum of ₹2,50,000/- (**Rupees Two lakh Fifty thousand only**) as compensation. The petitioner is entitled to realise an amount of ₹2,50,000/- as compensation from **R3** with interest at the rate of 8% per annum from the date of petition i.e., **06.12.2023** till realisation with proportionate costs. This issue is found in favour of the petitioner.

In the result,

- 1 An award is passed for ₹2,50,000/- (**Rupees two lakh fifty thousand Only**) with interest @ 8% per annum from the date of filing of the petition i.e., **06.12.2023** till realisation with proportionate costs.
- 2 R3 is directed to furnish cheques for ₹1,873/- towards Court Fee and ₹2,500/- towards Legal Benefit Fund payable by the petitioner, in favour of MACT, Kalpetta.
- 3 R3 shall deposit ₹50,000/- directly to bank account of the next friend/ father of the minor petitioner stated in Ext.A13 (A/c No.110282968595 IFSC : CNRB0001701) within one month from the date of award by way of electronic funds transfer, which she 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 amounts to the petitioner.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 26th day of March, 2026).

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioner's Witnesses :

Nil

Petitioner's Exhibits :

A1	28.09.2022	Copy of First Information Report & FIS
A2	29.09.2022	Copy of Scene Mahazar
A3	26.09.2022	Copy of Accident Register cum Wound Certificate
A4	03.10.2022	Copy of AMVI Report
A5	14.10.2022	Copy of Final Report
A6	12.03.2014	Copy of Birth Certificate

A7	10.08.2023	Copy of Discharge Summary
A8	10.11.2015	Copy of Aadhar Card of Anfas Roshan P.A
A9	31.03.2012	Copy of Aadhar Card of Ashraf
A10	-	Copy of PAN Card of Anfas Roshan P.A
A11	-	Copy of PAN Card of Ashraf
A12	13.09.2023	Copy of Bank Pass Book of Anfas Roshan P.A
A13	-	Copy of Bank Pass Book of Ashraf

Respondent's Witnesses & Exhibits : Nil

Court Witnesses Exhibits : Nil

MOTOR ACCIDENTS CLAIMS TRIBUNAL

Typed by : Jasna.P.H.
Compared by : Kalesh R.
FCS :