IN THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA

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

Monday, this the 01st day of June, 2026
11th day of Jyaishta, 1948

ORIGINAL PETITION (MV) Nos. 576/2023, 577/2023 & 599/2023

OP (MV) 576/2023

Between:

	Sruthi V., Aged 30 years, D/o Vijayan, Sreevalsam House, Vadakkoth,Vengeri Post, Kannadikkal, Karaparamba, Kozhikode District - 673 010.	Petitioner

And:

R1.	Abin A.V., Aged 34 years, S/o Varghese, Attinkara House, Pazheri Post, Sulthan Bathery Taluk, Wayanad District, Pin -673 592. ***(Driver of the KL-73 C-955 Lorry)***	Respondents
R2.	Shijo K.V., Age about 55 years, Kavungal House, Kuppadi Post, Armad, Sulthan Bathery Taluk, Wayanad District, Pin - 673 592. ***(Owner of the KL-73 C-955 Lorry)***	
R3.	The Branch Manager, United India Insurance Co.Ltd., Noranal Building, Mysore Road, Sulthan Bathery Post, Wayanad - 673 592. ***(Insurer of the KL-73 C-955 Lorry)***	
(*) Supl. R4.	Reji C, Aged 40 years, S/o. Gopalan Nair, Kamalalayam House, Puliyakode Post, Kadungallur, Kuzhimanna Taluk, Malappuram District -673 641. ***(Driver -cum-owner of the Car bearing No. KL-84 -8750)***	
(*) Supl. R5.	The Divisional Manager, The New India Assurance Co.Ltd., Divisional Office 122200, New India Center, 1st Floor, 17-A-Cooperage Road, Mumbai - Maharashta-400 001 (Local Address: Branch Manager, New India Assurance Co.Ltd., MGT Building, Kalpetta North Post - 673 122. ***(Insurer of the Car bearing No. KL-84 -8750)***	
(*)	***(Supplemental respondent Nos.4 &5 impleaded and amended as per orders in IA 02/2024 and IA 03/2024 dated 11/11/2024)***	

OP (MV) 577/2023

Between:

	Reji C, Aged 39 years, S/o Gopalan Nair, Kamalalayam House, Puliyakode Post, Kadungallur, Kuzhimanna Taluk, Malappuram District - 673 641.	Petitioner

And:

R1.	Abin A.V., Aged 34 years, S/o Varghese, Attinkara House, Pazheri Post, Sulthan Bathery Taluk, Wayanad District, Pin - 673 592. ***(Driver of the KL-73 C-955 Lorry)***	Respondents
R2.	Shijo K.V., Aged 55 years, Kavungal House, Kuppadi Post, Armad, Sulthan Bathery Taluk, Wayanad District, Pin - 673 592. ***(Owner of the KL-73 C-955 Lorry)***	
R3.	The Branch Manager, United India Insurance Co.Ltd., Noranal Building, Mysore Road, Sulthan Bathery Post, Wayanad - 673 592. ***(Insurer of the KL-73 C-955 Lorry)***	

OP (MV) 599/2023

Between:

(*) ~~1.~~	~~Reji C, Aged 39 years, S/o Gopalan Nair, Kamalalayam House, Puliyakode Post, Kadungallur, Kuzhimanna Taluk, Malappuram District -673 641.~~ ~~*(Father of the deceased Anika Annapoorna)*~~	Petitioners
~~2.~~ 1	Sruthi V., Aged 30 years, D/o Vijayan, Sreevalsam House, Vadakkoth, Vengeri Post, Kannadikkal, Karaparamba, Kozhikode District - 673 010.	
(*)	***(Mother of the deceased Anika Annapoorna)*** ***(Petitioner No.1 struck off and amended as per order in IA3/2024 dated 11.11.2024)***	

And:

R1. Abin A.V., Aged 34 years,
S/o Varghese, Attinkara House,
Pazheri Post, Sulthan Bathery Taluk,
Wayanad District, Pin - 673 592.

(Driver of the KL-73 C-955 Lorry)

R2. Shijo K.V., Aged 55 years,
Kavungal House, Kuppadi Post,
Armad, Sulthan Bathery Taluk,
Wayanad District, Pin - 673 592.

(Owner of the KL-73C-955 Lorry)

R3. The Branch Manager,
United India Insurance Co.Ltd.,
Noranal Building, Mysore Road,
Sulthan Bathery Post, Wayanad -673 592.

(Insurer of the KL-73 C-955 Lorry)

(*) **Supl.** R4. Reji C, Aged 40 years, S/o Gopalan Nair,
Kamalalayam House, Puliyakode Post,
Kadungallur, Kuzhimanna Taluk,
Malappuram District - 673 641.

(Owner Cum Driver of the Car bearing No. KL-84 -8750)
(Who is the Father of the deceased Anika Annapoorna)

(*) **Supl.** R5. The Divisional Manager, The New India
Assurance Co.Ltd., Divisional Office 122200,
New India Centre, 1st Floor, 17-A-Cooperage
Road, Mumbai – Maharashta-400 001
(Local Address: Branch Manager,
New India Assurance Co.Ltd., MGT Building,
Kalpetta North Post - 673 122.

(Insurer of the Car bearing No. KL-84 -8750)

(*) ***(Supplemental respondent Nos.4 &5 impleaded and amended as per orders in IA 04/2024 and IA 05/2024 dated 11/11/2024)***

Respondents

These OP (MV)s are coming on this the 29th day of May, 2026 for final hearing before me in the presence of Sri.T.R.Balakrishnan, Counsel for petitioners, Sri.T.P.Ealias, Counsel for respondent Nos.1&2, Sri.K.M.Thomas, Counsel for respondent No.3 in all the OP(MV)s and Sri.C.P.Prakash Babu, Counsel for supplemental respondent No.5 in OP(MV) 576/2023 & 599/2023 and Supplemental respondent No.4 remained absent and set exparte in OP(MV) 576/2023 & 599/2023 and having stood over for consideration to this day, the Tribunal passed the following.

COMMON AWARD

OP(MVs) 576/2023 and 577/2023 are filed under Section 166 (1) (a) of the Motor Vehicles Act 1988, and OP(MV) 599/2023 is filed under section 166 (1) (c) of the Motor Vehicle Act 1988, by the respective petitioners.

2. On 16.07.2025, joint trial of OP(MV) 577/2023 with other OP(MVs) is allowed.

3. Case of the petitioners in brief is as follows:- On 28.01.2023, at about 5.30 pm, while the petitioner in OP(MV) 576/2023, her daughter Anika Annapoorna were travelling in a car bearing Reg.No.KL-84-8750 driven by the petitioner in OP(MV) 577/2023/the supplemental R4 in other two OP(MVs), along Thirunelly – Cheeral Public Road, at a place namely Kolagappara town, a lorry bearing Reg.No.KL-73C-955, which was going in front of the car, driven by R1 in a rash and negligent manner, suddenly applied brake without giving any signal and consequently, the car dashed against the rear side of the lorry. In the accident, the petitioners in OP(MV) 576/2023 and 577/2023 and their minor child Anika Annapoorna had sustained grievous injuries. Later, at the hospital, the minor child succumbed to the injuries.

4. In OP(MV) 577/2023, case of the petitioner is that the accident was occurred due to the rashness and negligence of R1, the driver of the lorry bearing Reg.No.KL-73C-955.

5. In OP(MVs) 576/2023 and 599/2023, the driver cum owner of the car bearing Reg.No.KL-84-8750 i.e., to say, the petitioner in OP(MV) 577/2023 is impleaded as supplemental R4, and supplemental R5 as the insurer. In both these OP(MVs), compensation is claimed from all the respondents jointly and severally.

6. In short, in OP(MVs) 576/2023 and 599/2023, the injured and mother of then alive deceased being the passengers of the car bearing Reg. No.KL-84-8750 involved in the accident are claiming compensation against the owners and insurers of the respective vehicles i.e., to say, lorry bearing Reg. No.KL-73C-955 and car bearing Reg.No.KL-84-8750.

7. Petitioner in OP(MV) No.576/2023 was a tailor by profession, aged 30 years, and was earning a monthly income of **₹20,000/-** at the time of the accident. Petitioner is claiming compensation of **₹10 lakh**.

8. Petitioner in OP(MV) No.577/2023 was working as Manager in Malabar Devaswam, aged 39 years, and was earning a monthly income of **₹30,000/-** at the time of the accident. Petitioner is claiming compensation of **₹4 lakh**.

9. Originally, OP(MV) No.599/2023 was filed by both supplemental R4 as petitioner No.1 and the present petitioner. Later, petitioner No.1 has been transposed as supplemental R4. The present petitioner is the mother of the then alive deceased who was a minor aged 4 years at the time of the accident. Petitioner is claiming compensation of **₹10 lakh**.

10. On receipt of the summons, R1 to R3 in all the cases appeared and filed written statements with similar contentions. Supplemental R4 in OP(MVs) 576/2023 and 599/2023 remained absent. Hence, he was called absent and set exparte. Supplemental R5 in OP(MVs) 576/2023 and 599/2023 filed written statement and additional written statement.

11. R1 and R2 filed a joint written statement contending as follows :- It is admitted by R1 and R2 that they were the driver and owner respectively of the lorry bearing Reg.No.KL-73C-955 involved in the accident. According to R1 and R2, the accident was occurred solely due to the negligence of the petitioner in OP(MV) 577/2023. Further, it is contended that the vehicle was insured with the R3. Hence compensation if any is to be paid by R3.

12. R3 filed a written statement with the following contentions :- R3 admitted that the lorry bearing Reg.No.KL-73C-955 involved in the accident was validly insured with them at the time of the accident. According to R3, the accident occurred solely due to the rashness and negligence of the petitioner in OP(MV) 577/2023 as the driver of the car bearing Reg.No.KL-84-8750 and consequently, he was charge sheeted by the police. 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 petitioners have to prove these aspects with strict proof. For the reasons stated above prays to dismiss the petition.

13. Supplemental R5 originally filed a written statement in OP(MVs) 576/2023 and 599/2023 with the following contentions :- Supplemental R5 admitted that the car bearing Reg.No.KL-84-8750 involved in the accident was validly insured

with them at the time of accident. It is contended that, the accident occurred not due to the rashness and negligence of R4. It is also contended that at the time of the accident, the insured vehicle had no valid vehicular documents and R1 had no valid driving license. It is further contended that the OP is barred by the law of limitation. 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 petitioners has to prove these aspects with strict proof. For the reasons stated above prays to dismiss the petitions.

14. Supplemental R5 filed an additional written statement contending that the petitioner in OP(MV) 576/2023 and then alive deceased are gratuitous passengers in the car and hence not entitled to get compensation.

15. The following common issues were framed for consideration in OP(MVs) 576/2023 and 577/2023.

1 Whether the accident was due to the 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?

16. The following issues were framed for consideration in OP(MV) 599/2023.

1 Whether the accident was due to negligence of the respondent No.1?

2 Whether the deceased died as a result of injuries sustained in the accident?

3 Whether the petitioners are entitled to get compensation and if so who is liable to pay the same?

4 If issues No.1 to 3 are answered in favour of the petitioners what is the quantum of compensation entitled by the petitioners and how it is to be apportioned among them?

5 Reliefs and costs?

17. Both sides reported no oral evidence. On the side of the petitioners in OP(MV) 599/2023, Exts.A1 to A10 are marked. On the side of the petitioner in OP(MV) 576/2023, Exts.A11 to A16 & C1 are marked. On the side of the petitioner in OP(MV) 577/2023, PWs.1 and 2 are examined and Exts.A17 to A23 are marked. Exts.B1 to B4 are marked on the side of the respondents.

18. Heard both sides.

19. **Issue No.1 in both the OP(MV)s** :- The case pleaded by all the petitioners is that on 28.01.2023, at about 5.30 pm, while they were travelling in a car bearing Reg.No.KL-84-8750 along the National High Way from Thirunelly to Cheeral, at a place namely Kolagappra town, a lorry bearing Reg.No.KL-73C-955, going in front of them, suddenly, stopped the vehicle without giving any signal and consequently, the car dashed at its rear side. In short, a lorry moving in front of the car suddenly stopped in the middle of the road without giving any signal to the car coming behind it, and consequently, accident occurred.

20. Ext.A6 is the final report submitted by the investiging officer after due process of investigation. As per Ext.A6, the police charge sheeted the driver of the car bearing Reg.No.KL-84-8750 i.e., to say, the petitioner in OP(MV) 577/2023

for commission of offences punishable under Sections 279, 338 & 304(A) of the IPC. 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.*

21. In this case, petitioners sought to disprove the police charge sheet by examining PW1 and PW2. PW1 is none other than the petitioner in OP(MV) 577/2023, who was driving the car at the time of the accident. In proof affidavit itself, PW1 gave a slightly improvised version of the accident than from his pleaded case. According to PW1, at the time of the accident, the lorry driven by R1 suddenly stopped it in the middle of the road, and drove it in reverse gear in over speed. It is further stated that, since the place of occurrence was congested with traffic, he was not able to save the situation. The proof affidavit further reads, on seeing the vehicle coming towards his car, he continuously honked after stopping his car, but, by then, the rear side of the lorry rammed at his car and consequently the passengers in the car sustained injuries.

22. PW2 is examined as an eye witness to the accident. According to PW2, on 28.01.2023, at a time between 3.30 and 4 pm, while he was sitting at the rest shed of head load workers at Kolagappara, he witnessed the incident. According to PW2, the lorry involved in the accident was seen parked on the middle of the road for about three minutes prior to the accident. In cross examination, PW2 stated that at

the time of the accident, driver of the lorry was not available in the cabin; rather, he went to a tea shop.

23. Admittedly, the petitioner in OP(MV) No.577/2023 is found responsible for causing the accident by the investigating officer. As per Ext.A6, the car dashed at the rear side of the lorry, which was parked on the road. The common case pleaded by all the petitioners is that, at the time of the accident, the lorry driven by R1 was moving and the collision happened when R1 applied sudden brake without giving proper signals. As such, the petitioners have to prove the case they pleaded. As already stated, PW1, the best witness who was driving the car at the time of the accident has stated a totally different case that what he pleaded in the OP. It is the case of the PW1 that the lorry which was moving forward, suddenly stopped in the middle of the road, and drove back, even ignoring continuous honking, and he had no option but to stop the vehicle due to the traffic concession. It is important to note that PW1 has a case that the lorry came towards his car in over speed. So much so, it cannot be said that he was not referring to a possible slight movement of the vehicle after application of the brake which may happen in natural course.

24. Now coming to the evidence of PW2, the eye witness stated that the lorry was in a stationary position unmanned for about three minutes. Considering the inconsistent versions of the PW1 and PW2 regarding the accident, I am of the opinion that oral evidence of both of them cannot be believed at this juncture. The learned counsel for the petitioner in OP(MV) 577/2023 argued that even as per Ext.A6, the vehicle was stopped on the public road. The lorry was parked on the public road and hence, negligence is to be attributed on the driver of the lorry. I am of the opinion that the petitioners cannot pick and choose the findings of the

investigating officer to their convenience. The investigating officer came to a categoric conclusion that the accident was caused by the petitioner in OP(MV) 577/2023. There is no finding that the signals to be exhibited while parking a lorry were not exhibited. If the case spoken to by PW1 is correct, the vehicle was not stationary. It is also to be noted that the accident was occurred during broad day light. In such circumstances, I am of the opinion that, the oral evidence of PW1 and PW2 is not sufficient enough to prove the case which is pleaded by the petitioners in their respective OP(MVs). I find no reason to disbelieve Ext.A6. I am of the considered opinion that the accident was occurred not due to the rashness or negligence of R1, the driver of the lorry bearing Reg.No.KL-73C-955. On the other hand, as per Ext.A6, it is proved that the accident was caused due to the rash and negligent driving of the car bearing Reg.No.KL-84-8750 by the petitioner in OP(MV) 577/2023/the supplemental R4 in OP(MVs) 576/2023 & 599/2023. This issue is answered accordingly.

25. **Issue No.2 in all the OP(MV)s** :- In the written statement filed by the R5, the accident in which the petitioners and then alive deceased sustained injuries stands admitted. R5 in their written statement admitted that, the car bearing Reg.No.KL-84-8750 is validly insured with them.

26. Ext.A5 is the copy of Postmortem report dated 29.01.2023 issued from Department of Forensic Medicine, Government Medical College Hospital, Kozhikode pertaining to the then alive deceased in OP(MV) 599/2023. It is opined by the doctor who conducted the postmortem that the then alive deceased died due to injury sustained to chest and abdomen, consistent with the history of road traffic accident.

27. Ext.A11 is the copy of Emergency Department Out Patient Ticket issued from Vinayaka Hospital, Sulthan Bathery pertaining to the petitioner in OP(MV) 576/2023. As per Ext.A11, petitioner sustained the injury such as pain over the abdomen.

28. Ext.A18 is the copy of discharge summary issued from Aster Mims Hospital, Kozhikode pertaining to the petitioner in OP(MV) 577/2023. As per Ext.A18, petitioner sustained the injuries such as; contusion and hematoma anterior aspect of right hip.

29. The admission of R4 in their written statement and the Exts.A1, A5, A6, A11, and A18 will prove that the then alive deceased and petitioners sustained injuries in an accident as stated in the petitions. This issue is found in favour of the petitioners.

30. **Issue Nos.3 & 4 in OP(MV) 599/2023** :- The first question to be decided is, whether the petitioner No.1 (mother) is the legal heir of the then alive deceased. According to the petitioner, she is the legal heir of the then alive deceased. Ext.A3 is the family membership issued from Kuzhimanna Village Office. Ext.A3 will prove that the petitioner is the mother of then alive deceased. I find no reason to disbelieve Ext.A3. I am of the opinion that the petitioner is the legal heirs of the then alive deceased.

31. Admittedly, then alive deceased was a minor, aged 4 years at the time of the death. Since then alive deceased was a minor, he has no fixed income. Now the question is how compensation is to be calculated in the case of a death of the minor was considered by the Hon'ble Kerala High Court in **Master Jyothish Raj**

Krishna v Sunny George & others reported in 2024:KER:87009, considered the question what shall be the income of a minor aged 18 years, the Hon'ble High Court of Kerala held that, *minimum wages of a skilled worker is to be taken as the income of the minor* and fixed ₹17,325/- *as the monthly income with future prospects*. Hence, the monthly income of the minor deceased can be taken as ₹17,325/-. An enhancement of 40% is to be added to the monthly income for future prospects. Accordingly the monthly income of the then alive deceased is arrived as ₹**24,255/**- (17325+40% of 17325).

32. Towards his personal/living expenses, 1/2 of the income has to be deducted. The ½ of the income will come to ₹12127.5/- (24255/2). After deducting the amount, his monthly income will come to ₹12,128/- (24255-12127.5). Multiplier '18' is to be applied while assessing compensation for dependency. Hence, compensation for total dependency will come to **₹26,19,648 /-** (12128 x12x18).

33. Honourable Supreme Court in **Shriram General Insurance co.Ltd Vs Bhagat Singh reported int 2023 KHC online 7244**, it is held that loss of consortium cannot be awarded to each dependents, compensation so allowed shall be divided among dependents. Therefore towards consortium, an amount of ₹**48,400/**- is allowed to petitioners.

34. Towards funeral expenses the petitioners are entitled to get ₹**18,150/**- as compensation.

35. Towards loss of estate an amount of ₹**18,150/**- is allowed.

36. Towards damage to clothing, ₹**3000/**- is allowed.

37. Towards transportation an amount of **₹10,000/**- is allowed.

38. Petitioner No.1 being the mother of the then alive deceased is entitled to get the total compensation with proportionate costs and interest.

SUMMARY OF CLAIMS RAISED AND ALLOWED

Sl. No.	Head of claim	Amount claimed in ₹	Amount awarded in ₹	Basis
PART -				
1	Loss of earning (Total)	0	0	Nil
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	0	0	Nil
4	Loss of life of deceased	0	0	Nil
5	Bystander expenses	0	0	Nil
6	Transportation expenses	15,000	10,000	Nil
7	Extra nourishment	10,000	0	Nil
8	Damage to clothing, etc	2,000	3,000	Nil
9	Pain and suffering	1,00,000	0	Nil
10	Loss of dependency	8,00,000	26,19,648	12128 x12x18
11	Loss of estate	0	18,150	Nil
12	Loss of love and affection	0	0	Nil
13	Loss of consortium	88,000	48,400	Nil
14	Funeral expenses	25,000	18,150	Nil
15	Compensation for loss of life of deceased	0	0	Nil
16	Compensation for loss of earning power	0	0	Nil
	Total	**₹10,40,000/- Claim limited to ₹10 lakh.**	**₹27,17,348/- rounded to ₹27,17,350/-**	

39. **Issue Nos.3 & 4 in OP(MV) 576/2023**:- According to the petitioner, at the time of the accident, she was a tailor by profession, and was earning a monthly income of **₹20,000/-**. Apart from making such averments in the petition, no positive evidence is produced to prove the income of the petitioner. In the absence of any such evidence, I am of the opinion that only a notional income can be considered as the income of the petitioner. The Hon'ble High Court in Fathima K.T @ Pathummu v the Manager, National Insurance Company Limited, in MACA No.1059/2021 dated 06.03.2025, relying on the decision of the Honourable Supreme Court in Angad Tiwari and Another v National Insurance Company Ltd. and Another reported in 2024 KHC 8590, held that, the Tribunals and Courts shall not fix income below the minimum wages. Hon'ble Kerala High Court in **Master Jyothish Raj Krishna v Sunny George &** others reported in 2024:KER:87009 fixed a minimum wage of **₹17,325/**- relying on G.O(P) No.56/2017/Fin.dated 28.04.2017. I am of the opinion that the minimum wages of the petitioner can be fixed as **₹17,325/**-.

40. Ext.A11 is the copy of Emergency Department Out Patient Ticket issued from Vinayaka Hospital, Sulthan Bathery. Ext.A13 is the referral slip issued from the same hospital. Ext.A12 is the discharge summary issued from Aster MIMS Hospital, Kozhikode pertaining to the petitioner in OP(MV) 576/2023. As per Ext.A12, the petitioner was admitted in that hospital on 28.01.2023 and was discharged on 08.02.2023 (12 days) diagnosed with polcy trauma, hemoperitoneum (active bleeding fro uterine artery), signoid colon perforation, mediastinal hematoma, undisplaced fracture left radial styloid, soft tissue injury (multiple sites).

41. Ext.C1 is the report of Medical Board issued from District Hospital, Mananthavady, which assessed a permanent disability of 3% with respect to whole body.

42. Upon considering the nature of the injuries sustained to the petitioner, and the period for which she was treated, I am of the opinion that the petitioner is entitled to get a sum of **₹60,000/-** as compensation for pain and sufferings.

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

44. As per Ext.A12, the petitioner was treated as an inpatient for 12 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 **₹7,200/-** (600x12).

45. Towards, extra nourishment, the petitioner is entitled to get a sum of **₹7,200/-** (600x12).

46. Upon considering the nature of the injuries sustained to the petitioner, the period for which she was treated, I am of the opinion that petitioner might not have worked for 6 months after the accident and the petitioner is entitled to get an amount of **₹1,03,950/-** (17325x6) towards loss of earnings .

47. Towards transportation the petitioner the petitioner is entitled to get a sum of **₹6,000/-**.

48. Ext.C1 is the report of the District Medical Board, District Hospital, Mananthavady which assessed a permanent disability of 3% with respect to

whole body. *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)".* Considering the nature of the injuries, I am of the opinion that functional disability of the petitioner can be taken as **3**%.

49. Ext.A16 is the copy of the PAN card of the petitioner. As per Ext.A16, date of birth of the petitioner is 07.02.1992. The date of accident was on 28.01.2023. At the time of accident the petitioner was aged 30 years. Since the petitioner is a self employed aged below 39, an enhancement of 40% 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 515**7. Accordingly, the monthly income of the petitioner is arrived as **₹24,255/-** (17325+40% of 17325). Considering the age of the petitioner, multiplier '**17**' is to be applied 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 **₹1,48,441**/- (24255x12x17x3/100). That amount is allowed.

SUMMARY OF CLAIMS RAISED AND ALLOWED

Sl. No.	Head of claim	Amount claimed in ₹	Amount awarded in ₹	Basis
		PART -		
1	Loss of earning (Total)	1,20,000	1,03,950	For six months (17325x6)
2	Loss of earning (Partial)	0	0	Nil
3	Medical and miscellaneous expenses	2,00,000	0	Nil
4	Future treatment	0	0	0
5	Bystander expenses	0	7,200	600x12
6	Transportation expenses	15,000	6,000	Nil
7	Extra nourishment	10,000	7,200	600x12
8	Damage to clothing, etc	2,000	3,000	Nil
9	Pain and suffering	2,00,000	60,000	Considering nature of injuries
10	Loss of earning power	1,00,000	0	Nil
11	Loss of amenities and conveniences , etc	50,000	0	Nil
12	Compensation for continuing/ permanent disability	5,00,000	1,48,441	24255x12x17x3/ 100
13	Physical and mental shock	2,00,000	0	Nil
14	Loss of expectation of life	50,000	0	Nil
15	Inconveniences, hardship, discomfort, disappointment, frustration and mental stress in life	0	0	Nil
	Total	**₹14,47,000/- claim limited to ₹10 lakh**	**₹3,35,791/- rounded to ₹3,35,800/-**	

50. **<u>Issue Nos.3 & 4 in OP(MV) 577/2023</u>**:- While deciding issue No.1, I have already come to a conclusion that the accident was not due to the negligence of R1; rather, due to the negligence of the petitioner in OP(MV)

577/2023. Hence, the petitioner is not entitled to get compensation. Now I am tentatively considering the question of quantum of compensation to be awarded if, for any reason, it is found that petitioner is not negligent.

51. According to the petitioner, at the time of the accident, he was working as manager in Malabar Devaswam, and was earning a monthly income of **₹30,000/-**. Apart from making such averments in the petition, no positive evidence is produced to prove the income of the petitioner. In the absence of any such evidence, I am of the opinion that only a notional income can be considered as the income of the petitioner. The Hon'ble High Court in **Fathima K.T @ Pathummu v the Manager, National Insurance Company Limited, in MACA No.1059/2021 dated 06.03.2025**, relying on the decision of the Honourable Supreme Court in **Angad Tiwari and Another v National Insurance Company Ltd. and Another reported in 2024 KHC 8590**, held that, the Tribunals and Courts shall not fix income below the minimum wages. Hon'ble Kerala High Court in **Master Jyothish Raj Krishna v Sunny George & others reported in 2024:KER:87009** fixed a minimum wage of **₹17,325/-** relying on G.O(P) No.56/2017/Fin.dated 28.04.2017. I am of the opinion that the minimum wages of the petitioner can be fixed as **₹17,325/-**.

52. Ext.A18 is the copy of discharge summary issued from Aster Mims Hospital, Kozhikode. As per Ext.A18, the petitioner was admitted in that hospital on 29.01.2023 and was discharged on 30.01.2023 (2 days) diagnosed with contusion and hematoma anterior aspect of right hip.

53. Upon considering the nature of the injuries sustained to the petitioner, and the period for which he was treated, I am of the opinion that the

petitioner is entitled to get a sum of ₹**30,000/**- as compensation for pain and sufferings.

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

55. As per Ext.A18, the petitioner was treated as an inpatient for 2 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 ₹**1,200/**- (600x2).

56. Towards, extra nourishment, the petitioner is entitled to get a sum of ₹**1,200/**- (600x2).

57. Upon considering the nature of the injuries sustained to the petitioner, the period for which he was treated, I am of the opinion that petitioner might not have worked for one month after the accident and the petitioner is entitled to get an amount of ₹**17,325/**- (17325x1) towards loss of earnings.

58. Towards transportation the petitioner the petitioner is entitled to get a sum of ₹**6,000/**-.

59. Towards medical expenses, the petitioner produced Ext.A19 bill for ₹**53,624/**-. The learned counsel for R5 not opposed this bill. Hence, that amount is allowed.

60. OP(MV) 577/2023 has been filed against R1 to R3 jointly and severally. As per Ext.A6 final report, the petitioner is charge sheeted. In such circumstances, the petitioner is not entitled to get any compensation as he being the tort feasor. Hence OP(MV) is dismissed. No order as to costs.

61. **Now the next question is who shall pay the compensation in OP(MVs) 599/2023 and 576/2023**. While discussing issue No.1, I have already come to a conclusion that the accident was occurred not due to the rashness or negligence of R1. In such circumstances, R1 to R3 are not liable to pay the compensation.

62. As I have already stated that compensation is claimed from R1 to R5 jointly and severally. I have also arrived at a finding that R1 to R3 are not liable to pay compensation. Petitioner in OP(MV) 576/2023 and the then alive deceased in OP(MV) 599/2023 were the passengers in the car bearing Reg.No.KL-84-8750 owned and driven by R4. R5 admitted that the car was insured with them. It is contended by R5 that the petitioner and then alive deceased were gratutious passengers in the car. Even while taking such a contention, they have no case that the policy issued by them was an 'Act Only Policy'. Ext.B4 is the copy of the policy issued by R5. Going by Ext.B4, it can be seen that same is a 'Bundled Policy'. Hence, I am of the opinion that, R5 is liable to indemnify R4 to pay the compensation awarded towards the petitioners in OP(MV) 576/2023 & 599/2023.

63. In the written statement R5 took a contention that OPs are barred by the law of limitation. The accident in question was on 28.01.2023 and OPs are seen **'e'** filed on 27.07.2023. That means, the OPs are filed within six months from the date of accident. Though R5 took another contention in the written statement that at the time of the accident, the insured vehicle had no valid vehicular documents, and R4 had no valid driving license, no steps were taken by R5 to prove said contention. Hence, there is no merit in these contentions of R5.

64. In such circumstances, R4 the owner cum driver of the offending vehicle, and R5 being the insurer of the offending vehicle are jointly and severally liable to pay the compensation amount. Since R5 is the insurer of the vehicle, R5 shall pay the compensation for and on behalf of R4. These issues are found in favour of the petitioners.

65. **Issue No.5 in OP(MV) 599/2023** :- In view of the above findings, the petitioner is entitled for a sum of **₹27,17,350/- (Rupees Twenty seven lakh Seventeen thousand Three hundred and Fifty only)** as compensation. The petitioner is entitled to realise an amount of **₹27,17,350/-** as compensation from **R5** with interest at the rate of 8% per annum from the date of petition i.e., **21.08.2023** till realisation with proportionate costs. This issue is found in favour of the petitioner.

In the result,

1 An award is passed for **₹27,17,350/- (Rupees Twenty seven lakh Seventeen thousand Three hundred and Fifty only)** with interest @ 8% per annum from the date of filing of the petition i.e. **21.08.2023** till realisation with proportionate costs.

2 Petitioner No.1 being the mother of the then alive deceased is entitled to get the total compensation with proportionate costs and interest.

3 **R5** is directed to furnish cheques for ₹**26,547**/- (₹9373+17174) towards Court Fee including the Court Fee on the excess award amount, and **₹27,174/-** towards Legal Benefit Fund payable by the petitioner, in favour of MACT, Kalpetta.

4 After deducting Court Fee and Legal Benefit Fund, **R5** shall deposit

one half of the award amount directly to bank of the the petitioner No.1 (mother), within one month from the date of award, by way of electronic funds transfer, which she shall be at liberty to withdraw.

Bank account details of petitioner No.1

A/c No.**37350515520** IFSC : SBIN0071270 (Ext.A9)

5 For the balance amount create a Fixed Deposit in the name of the petitioner No.1 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.

6 Immediately when the payments as afore stated are made, **R5** 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.

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

66. **Issue No.5 in OP(MV) 576/2023** :- In view of the above findings, the petitioner is entitled for a sum of **₹3,35,800/- (Rupees Three lakh Thirty five thousand and Eight hundred only)** as compensation. The petitioner is entitled to realise an amount of **₹3,35,800/-** as compensation from **R5** with interest at the rate of

8% per annum from the date of petition i.e., **16.08.2023** till realisation with proportionate costs. This issue is found in favour of the petitioner.

In the result,

1 An award is passed for **₹3,35,800/- (Rupees Three lakh Thirty five thousand and Eight hundred only**) with interest @ 8% per annum from the date of filing of the petition i.e., **16.08.2023** till realisation with proportionate costs.

2 **R5** is directed to furnish cheques for **₹9,373/-** towards Court Fee and **₹10,000/-** towards Legal Benefit Fund payable by the petitioner, in favour of MACT, Kalpetta.

3 After deducting Court Fee and Legal Benefit Fund, **R5** shall deposit the award amount with proportionate costs and interest directly to bank account of petitioner **stated in Ext.A15 (A/c No.37350515520 IFSC : SBIN0071270)** within one month from the date of award by way of electronic funds transfer, which the petitioner shall be at liberty to withdraw.

4 Immediately when the payments as afore stated are made, **R5** 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.

5 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 01st ***day of June, 2026).***

MOTOR ACCIDENTS CLAIMS TRIBUNAL

APPENDIX

Petitioners' Witnesses :

PW1-	02/02/2026	Reji C
PW2-	24/02/2026	Rajan C.V.

Petitioner's Exhibits :

A1-	28/01/2023	Copy of First Information Report & FIS
A2-	30/01/2023	Copy of Scene Mahazer
A3-	10/07/2023	Copy of Family Membership Certificate
A4-	30/01/2023	Copy of AMVI Report
A5-	29/01/2023	Copy of Postmortem Report
A6-	29/03/2023	Copy of Final Report
A7-	-	Copy of Policy
A8-	-	Copy of Aadhar Card of Sruthi V.
A9-	-	Copy of Bank Pass Book of Sruthi V.
A10-	-	Copy of PAN Card of Sruthi V.
A11-	28/01/2023	Copy of emergence OP Ticket
A12-	08.02.2023	Discharge Summary of Sruthi V.
A13-	28.01.2023	Re feral Slip
A14-	-	Copy of Aadhar Card of Sruthi V.
A15-	-	Copy of Bank Pass Book of Sruthi V.
A16-	-	Copy of PAN Card of Sruthi V.

A17-	-	Not proceed
A18-	30.01.2023	Copy of Discharge Summary
A19-series	-	Medical Bills
A20-	28.05.2025	Copy of Private Complaint
A21-	20.11.2024	Copy of Aadhar Card of Reji C.
A22-	21/01/2025	Copy of Bank Pass Book of Reji C.
A23-	-	Copy of PAN Card of Reji C.

Respondent's Witnesses : Nil

Respondents' Exhibits :

B1-	29/03/2023	Copy of Final Report
B2-	29/03/2023	Copy of Memorandum of evidence
B3-	29/03/2023	Copy of Final Report
B4-	-	Copy of Policy

Court Witnesses : Nil

Court Exhibits :

C1-	16/09/2025	Medical Certificate issued by District Medical Board, Wayanad

MOTOR ACCIDENTS CLAIMS TRIBUNAL

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

COMMON FAIR AWARD IN OP(MV)s.576/2023, 577/2023 & 599/2023	
Dated:01.06.2026	
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".