



2026:KER:23137

MACA No.1680/2015

..1..

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 16TH DAY OF MARCH 2026 / 25TH PHALGUNA, 1947

MACA NO. 1680 OF 2015

OPMV NO.1121 OF 2004 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,

MAVELIKKARA

APPELLANTS/PETITIONERS:

1

2

(MOTHER, GUARDIAN AND NEXT FRIEND REPRESENTING THE 1ST
PETITIONER)

BY ADVS.
SRI.K.SHAJ
SRI.SAJJU.S

RESPONDENTS/3RD RESPONDENT:

1 THE UNITED INDIA INSURANCE CO.LTD.
KAYAMKULAM BRANCH REPRESENTED BY ITS MANAGER,
KAYAMKULAM, PIN-690 502.

ADDL.R2 THE SUPERINTENDENT
MEDICAL COLLEGE HOSPITAL, KALAMASSERY,



2026:KER:23137

MACA No.1680/2015

..2..

ERNAKULAM - 683503

**(THE ADDITIONAL RESPONDENT NO.2 IS SUO MOTU IMPLEADED
AS PER ORDER DATED 15.12.2025 IN MACA)**

BY ADV SHRI.P.MURALEEDHARAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR HEARING
ON 11.02.2026, THE COURT ON 16.03.2026 DELIVERED THE FOLLOWING:**



“CR”

JUDGMENT

“Whether the functional disability of a minor child, who has sustained intellectual disability in a road traffic accident, can be assessed at 100%?”

2. This appeal has been filed by the claimants in OP(MV) No.1121 of 2004 on the files of the Motor Accidents Claims Tribunal, Mavelikkara, claiming enhancement of compensation. The first respondent herein was the third respondent/insurer before the tribunal; and the additional second respondent herein was *suo motu* impleaded during the pendency of the appeal.

3. The case of the claimants was that on 26.01.2004, while the first claimant/injured was travelling in a car bearing Reg.No.KL-5-D-8856, a pickup van bearing Reg.No.TN-76-5884 driven by the first respondent in a rash and negligent manner, hit the car, whereby she sustained serious injuries. The first claimant, being the injured, and the second claimant, being the mother, guardian and next friend, have approached the tribunal claiming a total compensation of ₹2,90,000/-.

4. Respondents 1 and 2, who are the driver and owner of



..4..

the offending vehicle respectively, remained *ex parte* before the tribunal. The third respondent insurer filed a written statement, admitting the policy coverage for the offending vehicle, but disputing the liability and quantum of compensation claimed. PW1 & PW2 were examined and Exts.A1 to A23 were marked. The following issues arose for consideration before the tribunal:

- “1. Who is negligent in the matter of accident?
2. Whether the petitioners are entitled for compensation and if so, what is the quantum and who is liable?
3. Reliefs and costs?”

The tribunal, after analysing the pleadings and materials on record, held that the accident took place on account of the negligence of the driver of the offending vehicle, and following **Master Mallikarjun v. Divisional Manager, The National Insurance Co. Ltd. and Another** (2013 KHC 4670) awarded a sum of ₹4,37,869/- as compensation under respective heads with interest @ 9% per annum from the date of petition till realization, against the third respondent being the insurer. Dissatisfied with the quantum of compensation awarded by the tribunal, the claimants have come up in appeal.

5. I have heard Sri.K.Shaj and Sri.Bharat Vijay, learned counsel for the appellants; Sri.P.Muraleedharan, learned Standing Counsel for the respondent insurer; and Sri.Shameer P.M., learned



Government Pleader.

6. The learned counsel for the appellants submitted that the compensation awarded by the tribunal, as a whole, is on the lower side and sought for enhancement of compensation under different heads, which are considered separately as follows:

6.1. Notional Income & Permanent disability -

According to Sri.Bharat Vijay, the learned counsel for the appellants, the first appellant/injured was a very active girl child who sustained severe injuries in the accident at the age of 3½ years, which ultimately resulted in intellectual disability. It is submitted that though the Medical Board of the Medical College Hospital, Alappuzha, assessed her permanent disability at 50% as per Ext.A23 disability certificate, the tribunal, placing reliance on the decision of the apex court in **Master Mallikarjun** (*supra*), awarded only a meagre sum of ₹4,00,000/- as a consolidated compensation for permanent disability. The learned counsel for the appellants contended that the injured is functionally 100% disabled on account of the intellectual impairment, resulting in total dependence, loss of enjoyment and amenities of life, ongoing unexplained pain, hardship and suffering, and a life long need for support due to limited intellectual capacity. She was admitted to a



special school which accommodates students only up to the age of 25 years; and upon attaining that age, she had to be brought back to her parental home. The learned counsel also pointed out that she has lost her marriage prospects and would require the assistance of a support person throughout her lifetime owing to her limited intellectual capacity and inability to respond to the demands of day-to-day life. Thus, the learned counsel, relying on the judgments of the apex court in **Kajal v. Jagdish Chand & others** [(2020) 4 SCC 413], **Baby Sakshi Greola v. Manzoor Ahmad Simon & another** [2024 KHC OnLine 6694], **Master Ayush v. Branch Manager, Reliance General Insurance Co. Ltd. and Another** [2022 KHC OnLine 6348)] and the judgment of this Court in **Master Jyothis Raj Krishna v. Sunny George** [2024 (6) KLT 649], sought for an enhancement of compensation.

6.1.1. The learned Standing Counsel for the insurer, on the other hand, submitted that the tribunal has, in detail, considered the nature and extent of the disability sustained by the injured and has awarded a just and adequate compensation. It was further submitted that, although the injured is intellectually disabled, she does not require the assistance of a bystander throughout her lifetime, as she is capable of carrying out her day-to-day activities independently.



..7..

6.1.2. I have considered the rival contentions raised on both sides. Admittedly, the first appellant/injured was a girl child aged 3½ years at the time of the accident, and as a result of the injuries sustained, she suffered intellectual disability. Upon considering the aforesaid facts, on 14.11.2025, this Court desired to see the injured in person and thus directed her to appear. Initially, her location could not be determined. Later, after obtaining the necessary details through the learned Government Pleader, the family was contacted and the injured was brought by her parents before this Court. This Court interacted with her and observed that, though she is aged 25 years and legally an adult, her behaviour and traits resembled that of a small girl child. Hence, to evaluate the degree of disability, by order dated 15.12.2025, this Court referred her to the Medical Board of the Medical College Hospital, Kalamassery for assessment, pursuant to which, the Medical Board examined the injured and issued a detailed report dated 24.01.2026, assessing her with 75% moderate intellectual disability and 20% locomotor/functional disability. The total permanent disability was thus assessed at 80%.

6.1.3. Firstly, this Court is required to consider the functional disability of the injured. Mental retardation, now referred to as intellectual disability, is a condition characterised by arrested or



..8..

incomplete development of mental capacity, which affects intelligence, adaptive functioning, and practical skills. It is assessed on the basis of measured intelligence quotient, functional abilities, and mental age, and is classified into different degrees depending on severity. Intellectual disability results in lifelong impairment and functional incapacity. The Psychiatrist of the Medical Board, after examining the injured, found that 'she had regression in the developmental milestones resulting in features suggestive of intellectual disability'. After assessment by several tests, the Clinical Psychologist of the Medical Board reported that 'the assessment reveals a mental age of 6 years and 11 months and SQ of 47, indicating moderate intellectual disability'. The Neurologist found that 'she has cerebellar dysarthria, mild imbalance in walking and abnormal position sense'. The Neurosurgeon, after examination, opined that 'she has subdural haemorrhage (L) occipital region with bifrontal subdural hygroma and mild brain contusion'. It is also reported that she is able to carry out day-to-day activities without assistance, but with supervision. The Physiatriest of the Medical Board opined that 'she can manage most of her activities of daily living with direct supervision; and her higher mental functions are affected with dysarthria and significant intellectual disability'. Accordingly, the report of the Medical Board dated 24.01.2026 was concluded as follows:

**“Conclusion:**

Miss _____ MACA No. 1680/ 2015 (F), hailing from _____ is a known case of Traumatic Brain Injury (TBI) at 4 years of age, secondary to Road Traffic Accident in February 2004. She was initially managed in Neurosurgical Intensive Care Unit of TD Medical College, Alappuzha for 3 weeks and came out of initial serious consequences of TBI, following which she didn't undergo proper continued medical or rehabilitative care (as per her clinical records submitted). However, she could gain appreciable motor/ muscular strength(gr 4 Motor function) of bilateral limbs, with reduced balance control and coordination during her activities of daily living including gait, over the years.

At present she has:

- 1) Moderate intellectual disability amounting to 75%.
- 2) Locomotor/ functional disability of 20%, on account of motor dysfunction by gr 1 and decreased balance -coordination.

Total permanent percentage of Disability is 80%, comprising of 75% Intellectual Disability and 20% Locomotor / functional Disability.”

Thus, as per the report of the Medical Board, the intellectual functioning/mental age of the injured is that of a 6-year-old child. It is also evident that she is able to carry out her day-to-day activities only under supervision. Being intellectually disabled, no amount of money can renew her mental faculties that have been battered or shattered due to the accident.

6.1.4. This Court, in **Kajal** (*supra*) and **Baby Sakshi Greola** (*supra*) has found that in a case of intellectual disability, the percentage of disability has to be taken as 100%. In **Kajal** (*supra*) and **Baby Sakshi**



Greola (*supra*), the injured was totally bedridden, whereas, in the present case, the injured is not bedridden, but is intellectually disabled. The Medical Board has assessed her permanent disability at 80%. Upon interacting with her in person and considering the report of the Medical Board as well as the documents produced by the appellants, I deem it appropriate to reassess and fix her functional disability at 100%. Since the functional disability is fixed at 100%, following **Baby Sakshi Greola** (*supra*), I am inclined to adopt the multiplier method instead of awarding a consolidated amount following **Master Mallikarjunan** (*supra*).

6.1.5. As regards the notional income, the injured was a minor girl aged 3½ years at the time of the accident in the year 2004. The apex court, in **Hitesh Nagjibhai Patel v. Bababhai Nagjibhai Rabari** [2026 (1) KHC 316], **Kajal** (*supra*) and **Baby Sakshi Greola** (*supra*), held that while determining the notional income of a minor, the income has to be fixed on the basis of the minimum wages payable to a skilled labourer in the respective State. However, in the present case, the accident occurred in the year 2004 and no minimum wages had been fixed by the State of Kerala for a skilled labourer at the relevant time. Therefore, in order to award a just and reasonable compensation, I deem it appropriate to fix the notional monthly income of the injured at



₹3,000/- taking into consideration the year of the accident.

6.1.6. Since the functional disability of the injured is fixed at 100%, following **National Insurance Co. Ltd. v. Pranay Sethi** [2017(4) KLT 662(SC)], after adding 40% future prospects to the re-fixed income, the income would be ₹4,200/- (3000 + 1200). Accordingly, following the judgments of the apex court in **Pranay Sethi** (supra) and **Sarla Verma v. Delhi Transport Corporation** [2010(2) KLT 802(SC)], the injured will be entitled to get a total compensation of ₹7,56,000/- (4200 x 12 x 15 x 100%) towards permanent disability. Since the tribunal already awarded a consolidated amount of ₹4,00,000/-, there will be an additional amount of ₹3,56,000/- under the head of permanent disability.

6.2. Bystander Expenses - The learned counsel for the appellants submitted that though the first appellant/injured has attained majority, she requires the assistance of a bystander throughout her lifetime as she is able to carry out her day-to-day activities only under supervision. It is admitted by the learned counsel for the appellants that the injured was admitted to a special school and was under their care and protection, but on attaining the age of 25 years, she is brought back to the parental home and a care of a support person is required.



Considering the fact that the Medical Board has assessed her intellectual capacity as equivalent to that of a six-year-old child, and further taking into account the fact that she is able to perform her day-to-day activities only under supervision, I find it appropriate to award compensation towards bystander expenses by adopting the multiplier method, fixing ₹3,000/- per month for a support person for a period of 15 years. Thus, the injured will be entitled to get a total compensation of ₹5,40,000/- (3000 x 12 x 15).

6.3. Pain & suffering - The learned counsel for the appellants submitted that no compensation was awarded by the tribunal towards pain and suffering. The injured sustained a sub-acute thin subdural haemorrhage - left parietal region with bifrontal subdural hygroma and left mid brain haematoma. Considering the injuries sustained by her and the physical and mental sufferings that she had undergone and continues to undergo, I am inclined to grant an amount of ₹5,00,000/- as compensation towards pain and suffering.

6.4. Loss of amenities - Though the injured has now attained womanhood, her intellectual capacity remains that of a six-year-old child. She is deprived of the normal pleasures of life, including the enjoyment of youthful activities and companionship with friends. In



view of the injuries sustained by the appellant and the consequent loss of enjoyment of life, I deem it appropriate to award a total compensation of ₹5,00,000/- towards loss of amenities.

6.5. Loss of marriage prospects - In view of the intellectual disability suffered by the injured, which has adversely affected her enjoyment of life and marital prospects, I deem it appropriate to award ₹5,00,000/- towards loss of marriage prospects.

7. Though the appellants claimed enhancement of compensation under other heads as well, on a perusal of the records available and the impugned award, I am not inclined to interfere with the same since it appears to be just and reasonable.

8. Since the appeal is of the year 2015, I fix interest on the enhanced compensation @ 7% per annum from the date of the claim petition till realization.

9. **The method of payment of compensation** - Though the first appellant sustained the disability when she was aged 3½ years, she has now attained majority and is 25 years of age. However, she is intellectually disabled and needs support from the family throughout her life. Hence, I find it appropriate to direct the tribunal to deposit 60% of the enhanced amount now awarded in appeal, in a long term fixed



deposit in a nationalised bank in the name of the appellants. The interest accruing on the said fixed deposit shall be payable to the claimants/appellants, if so required. The second appellant, who is the mother/guardian and next friend, shall be allowed to withdraw the remaining 40% of the enhanced compensation. If any need arises in future for the withdrawal of the fixed deposit amount for the betterment of the first appellant/injured, the second appellant shall be at liberty to approach the tribunal by filing an appropriate application; and the tribunal, if satisfied that sufficient reasons are stated, shall permit such withdrawal of the amount.

10. Thus, the compensation awarded by the tribunal is enhanced as follows:

Sl No	Head of Claim	Amount claimed (in ₹)	Amount awarded by the tribunal (in ₹)	Modified in appeal (in ₹)	Total compensation (in ₹)
1	Medical expenses	25000	12869	-	12869
2	Bystander expenses	7000		540000	540000
3	Transport to hospital	20000		-	-
4	Extra nourishment	10000	-	-	-
5	Damage to clothing	1000	-	-	-
6	Pain and suffering	30000		500000	500000
7	Loss of amenities	50000		500000	500000



8	Permanent disability	250000	400000	356000	756000
9	Discomfort, inconvenience and loss of earnings to parents during the period of hospitalization	-	25000	-	25000
10	Loss of marriage prospects	-	-	500000	500000
	Total	293000 limited to 290000	437869	2396000	2833869

Accordingly, the appeal is allowed in part and the impugned award is modified as follows:

- a) The appellants are awarded an additional compensation of ₹23,96,000/- (Rupees twenty three lakh and ninety six thousand only) over and above the compensation awarded by the tribunal with interest @ 7% per annum from the date of petition till realization and proportionate costs.
- b) The respondent insurer shall deposit the said amount together with interest and costs before the tribunal within a period of two months from the date of receipt of a certified copy of this judgment.
- c) The tribunal shall release to the appellants/claimants only 40% of the amount so deposited by the respondent insurer and shall keep



the remaining 60% in a long term fixed deposit in a nationalised bank in the name of the appellants; and the interest accruing on the said fixed deposit shall be payable to the claimants/appellants, quarterly, if so required.

- d) The second appellant/mother shall be allowed to withdraw the remaining 40% of the enhanced compensation deposited by the insurer. If any need arises in future for the withdrawal of the fixed deposit amount for the betterment of the first appellant/injured, the second appellant/mother shall be at liberty to approach the tribunal by filing an appropriate application; and the tribunal, if satisfied with the reasons stated, shall permit such withdrawal of the amount.

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE