



2026:KER:26694

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

TUESDAY, THE 24<sup>TH</sup> DAY OF MARCH 2026 / 3RD CHAITHRA, 1948

MACA NO. 2904 OF 2016

AGAINST THE AWARD DATED 31.07.2015 IN OPMV NO.549 OF 2009 OF  
MOTOR ACCIDENTS CLAIMS TRIBUNAL, THODUPUZHA

APPELLANT/CLAIMANT BEFORE THE TRIBUNAL:

SHAJI  
AGED 46 YEARS,  
S/O. KURUVILA, PANDARAKUNNEL HOUSE,  
KALTHOTTY KARA, AYYAPPANCOIL VILLAGE.

BY ADV SRI.S.SACHITHANANDA PAI

RESPONDENTS/RESPONDENTS BEFORE TRIBUNAL:

- 1 SOMAN  
S/O. RAMANKUTTY, PARACKAL HOUSE, KATTAPPANA,  
KUNTHALAMPARA KARA-686508.
- 2 ICICI LOMBARD GENERAL INSURANCE CO. LTD.  
REP. BY ITS BRANCH MANAGER, 3RD FLOOR,  
KANNAMKARA ESTATE, MARINE DRIVE, SHANMUGHOM ROAD,  
KOCHI-31.

BY ADVS.  
SHRI.A.C.DEVASIA  
SHRI.P.JACOB MATHEW  
SRI.MATHEW DEVASSI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD  
ON 24.03.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



**“C.R”**

**M.B.SNEHALATHA, J.**

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**M.A.C.A.No.2904 of 2016**  
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**Dated this the 24<sup>th</sup> day of March 2026**

**JUDGMENT**

The claimant in OP(MV).No.549/2009 on the file of the Motor Accidents Claims Tribunal, Thodupuzha has filed this appeal seeking enhancement of compensation awarded by the Tribunal and also challenging the finding of the Tribunal exonerating R2 insurance company from paying the award amount.

2. According to the appellant/claimant, on 13.09.2007 at around 7.30 p.m while he was travelling in a pick-up van bearing registration No.KL-6D/7531, accompanying the goods of the employer and when it reached at Kadamakuzhy, the pick-up van capsized due to the rash and negligent driving of the driver of the said vehicle. In the accident, the appellant/claimant sustained grievous injuries. R1 is the owner cum driver of the offending vehicle. R2 is the insurer. R1 and R2 are liable to pay compensation.



3. Before the Tribunal, R1 remained absent and he was set *ex parte*.

4. R2 insurance company filed written statement contending that claimant was a gratuitous passenger, who was travelling in the plat-form of the vehicle and therefore, insurance company is not liable to indemnify the 1<sup>st</sup> respondent. Further it was contended that the amount claimed under various heads are excessive.

5. By the impugned award, the Tribunal awarded a sum of ₹1,37,400/- as compensation with interest at the rate of 7% per annum and R1 was directed to pay the amount. It was held that R2 is not liable to indemnify R1, who was the owner cum driver and there was a clear violation of permit and policy issued to R1.

6. The claimant has preferred this appeal contending that the amount awarded is inadequate; that the amount awarded under all heads are on a lower side and it is not a just and reasonable compensation. It was further contended that the learned Tribunal erred in exonerating the insurance company from liability to pay the compensation amount.



7. Per contra, the learned counsel appearing for the insurance company, submitted that the victim was travelling in the plat-form of the vehicle and therefore, there was violation of policy conditions and accordingly, the learned Tribunal was right in exonerating the insurance company from liability.

8. Heard both sides. Records perused.

9. The accident is admitted. It is also an undisputed fact that the accident occurred due to the rash and negligent driving of R1, who was the owner cum driver of the pick-up van.

10. At first, let us see whether the claimant is entitled to enhanced compensation and if so what is the quantum.

11. According to the claimant, he sustained grievous injuries in the accident and he had to undergo treatment for a long period and on account of the injuries suffered in the accident, he sustained permanent disability.

12. Medical records would show that the claimant sustained Acromio clavicular subluxation and hip fracture, and he had undergone treatment. He has also produced Ext.A14 disability certificate, wherein his whole body disability has been assessed as 13%.



13. The case of the claimant is that he is a catering worker by occupation and he was earning ₹6,000/- per month. But the absence of any materials to prove the income, the Tribunal fixed his notional income as Rs.3,000/- per month.

14. The learned counsel for the claimant contended that going by the decision of the Apex Court in *Ramachandrapa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]*, the Tribunal ought to have taken at least ₹6,000/- per month as notional income.

15. In *Ramachandrapa [cited supra]*, the Hon'ble Supreme Court fixed the notional income of a coolie worker in the year 2004 as ₹4,500/- per month. In *Syed Sadiq and Others v. Divisional Manager, United India Insurance Company Limited [(2014) 2 SCC 735]* the Hon'ble Supreme Court fixed the notional income of a vegetable vendor in the year 2008 at the rate of ₹6,500/- per month.

16. In *National Insurance Company. Limited. v. Pranay Sethi and Others. [(2017) 16 SCC 680]* the Hon'ble Supreme Court has recognized the principle that there would be incremental



enhancement in the case of even self-employed individuals in the unorganized sector and with respect to an unspecified job of a coolie considering the increase in cost of living and economic advancement over the years, it can be safely assumed that even a coolie worker would be eligible for incremental addition of ₹500/- in every subsequent year.

17. Bearing in mind the above yardsticks, this Court is of the view that the notional income of the claimant herein can be fixed at ₹6,000/- per month for the purpose of awarding just compensation in the claim petition filed by him.

18. The Tribunal has awarded ₹18,000/- under the head loss of earnings for a period of six months at the rate of ₹3,000/- per month. This Court has taken his notional income as ₹6,000/- per month. Accordingly, an amount of ₹36,000/- (6,000x6) is awarded under the said head.

19. The victim was aged 38 years at the time of accident. Therefore, 40% of the income is to be added towards future prospects (*National Insurance Co. Ltd. v. Pranay Sethi [(2017) 16 SCC 680]*). If 40% is thus added to the notional monthly income



of ₹6,000/-, the income would come to ₹8,400/- (₹6,000 + ₹2,400). Since the victim was aged 38 years, the multiplier applicable to him is 15. Therefore, he is entitled to get ₹1,96,560/- (8,400x12x15x13/100) under the head loss of disability instead of ₹70,200/- awarded by the Tribunal.

20. Under the head pain and suffering, the Tribunal has awarded only ₹20,000/-, which is on a lower side. Taking into account the injuries suffered by the claimant an amount of ₹40,000/- is awarded to the pain suffering as against ₹20,000/-.

21. Under the head bystander expenses, the Tribunal has awarded a sum of ₹300/- which is found to be very meager. Accordingly, a sum of ₹1,000/- is awarded.

22. Amount awarded by the Tribunal under all other heads do not require any interference.

23. The compensation payable to the claimant is as indicated in the tabular statement shown herein below:

Sl. No.	Head of Claim	Amount awarded by the Tribunal	Total amount after enhancement in appeal
1	Loss of earning	18,000/-	36,000/- (6000x6)



2	Transportation expense	1,000/-	1,000/-
3	Extra nourishment	1,000/-	1,000/-
4	Damages to clothes	500/-	500/-
5	Treatment expenses	3,000/-	3,000/-
6	Charges for bystander	300/-	1,000/-
7	Pain and suffering	20,000/-	40,000/-
8	Loss of amenities	23,400/-	23,400/-
9	Loss of disability	70,200/-	1,96,560/-
	Total	1,37,400/-	3,02,460/-
Amount enhanced is ₹1,65,060/- (₹3,02,460-1,37,400)			

24. The next point for consideration is whether the Tribunal was right in exonerating the insurance company from paying the compensation. The evidence on record would show that the claimant was travelling in a pick-up van, which was a goods vehicle.

25. In *Kaminiben & Ors v. The Oriental Insurance Company Limited & Ors.* reported in 2026 LiveLaw (SC) 174, after referring to its earlier decisions in *Manuara Khatun & Others. v. Rajesh Kumar Singh & Others.* [2017 (4) SCC 796]; *Manager, National Insurance Company Limited v. Saju P. Paul & Another* [2013 (2) SCC 41] the Hon'ble Supreme Court held that when the deceased



was a gratuitous passenger in a goods vehicle, the insurance company is liable to pay the amount and recover the same from the insured. It was a case wherein the deceased was travelling in a tempo hired on the occasion of a Ganesh immersion festival to carry the idol for immersion in river and the dominant purpose for hiring the vehicle was not travelling but for carrying the Ganesh idol for immersion. On the facts of that case in para 10 & 11 of the Apex Court observed as follows:

*"In the present case, the deceased was travelling in the subject tempo along with Ganesh Idol, which was taken for immersion in Narmada River. Thus, the dominant purpose for hiring the vehicle was not for travelling but for carrying the Ganesh idol for immersion. Travelling in the vehicle was only incidental, therefore, at best, the deceased can be treated as gratuitous passenger travelling with his goods (Ganesh idol). This being the circumstance, we rely on the judgment in the matter of Manuara Khatun & Ors. (supra), wherein this Court has held thus in paragraph Nos. 15 and 16:-*

*"15. This question also fell for consideration recently in National Insurance Co. Ltd v. Saju P. Paul [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] wherein this Court took note of entire previous case law on the subject mentioned above and examined the question in the context of Section 147 of the Act. While allowing the appeal filed by the insurance company by reversing the judgment [Saju P. Paul v. National Insurance Co., 2011 SCC OnLine Ker.3791:2012 ACJ 1852] of the High Court, it was held on facts that since the victim was travelling in offending vehicle as "gratuitous passenger" and hence, the insurance company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, this Court keeping in view the benevolent object of the Act and other relevant factors arising in the case, issued the directions against the insurance company to pay the awarded*



2026:KER:26694

*sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of "pay and recover".*

*16. R.M. Lodha, J. (as his Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under : (Saju P. Paul case [National Insurance Co. Ltd. v. Saju P. Paul, (2013) 2 SCC 41 : (2013) 1 SCC (Civ) 968 : (2013) 1 SCC (Cri) 812 : (2013) 1 SCC (L&S) 399] , SCC pp. 52 & 55)*

*"20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).*

*26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur [National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1 : 2004 SCC (Cri) 370] and Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357] should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao [National Insurance Co. Ltd. v. Challa Upendra Rao, (2004) 8 SCC 517 : 2005 SCC (Cri) 357]."*

*11. Thus, in Manuara Khatun & Ors. (supra), this Court has referred and approved Saju P. Paul (supra) case to hold that when the victim was a gratuitous passenger, this Court issued directions against the insurer of the offending vehicle to first*



2026:KER:26694

*satisfy the awarded sum, and then to recover the same from the insured in the same proceedings.”*

26. Therefore, R2 insurance company cannot be exonerated from the liability. R2 is liable to pay the amount and after payment of the award amount, R2 insurance company is entitled to recover the amount from R1.

27. In the result, this MACA is allowed.

28. The 2<sup>nd</sup> respondent/insurer is directed to deposit the award amount of ₹3,02,460/- as enhanced by this Court with 8% interest in the Bank Account of the claimant within a period of two months from the date of receipt of a copy of this judgment, after deducting the deposit if any already made. Since there was a delay of 308 days in filing the appeal, the claimant will not be entitled to interest on the enhanced amount for the period of 308 days.

29. After payment of the award amount, R2 insurance company is entitled to recover the amount from R1.

30. The claimant shall produce the details of the bank account before the Motor Accident Claims Tribunal, Thodupuzha,



2026:KER:26694

within one month from the date of receipt of a certified copy of this judgment.

**Sd/-  
M.B.SNEHALATHA,  
JUDGE**

Mms