IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

THURSDAY, THE 18TH DAY OF JUNE 2026 / 28TH JYAISHTA, 1948

MACA NO.947 OF 2011

AGAINST THE AWARD DATED 31.12.2010 IN OP(MV)NO.2340 OF 2004 OF

MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/CLAIMANT:

SANTHOSH
S/O.MICHEAL, PODIYATH HOUSE, THIRUVANCHIKULAM,
KODUNJALLORE-PO, TRICHUR DT.

BY ADVS.
SHRI.CHERIAN SEBASTIAN
SHRI.M.JAMES ANTONY

RESPONDENTS/RESPONDENTS:

1 E.A. SAINABA
W/O.P.A.ASHARAF, H.O.NO.12/40-A, ELANTHIPPARAMBIL
HOUSE, KEERAMPADAM, PALLAM-LANE,
KOOVAPPADAM, KOCHI-682 002., (OWNER).

2 FAZALUDEEN, S/O.ABUBAKER
13/944, R.K.PILLAI-ROIAD, KARUVELIPPADI,
KOCHI-682 005, (DRIVER).

3 NEW INDIA ASSURANCE CO.LTD.
KOTTAKKAL ARYA VYDYASALA BUILDINGS,
M.G.ROAD, KOCHI-682 016.

BY ADV SHRI.N.S.NAJEEB

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 18.06.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

The appellant in this appeal filed under Section 173 of the Motor Vehicles Act, 1988, is the claimant in O.P.(MV)No.2340 of 2004 on the file of the Motor Accidents Claims Tribunal, Ernakulam, a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, claiming a compensation of Rs.2,00,000/-, under different heads, on account of the injuries sustained by him in a motor accident, which occurred on 28.06.2004, while he was travelling on a two-wheeler bearing Reg.No.KL-08/W-9072, as a pillion rider. At the place of accident, the two-wheeler was hit by a stage carriage bearing Reg.No.KL-07/AN-4708, owned by the 1st respondent, driven by the 2nd respondent and insured with the 3rd respondent. In the accident, the claimant sustained injuries.

2. Before the Tribunal, respondents 1 and 2 filed a joint written statement, admitting the ownership of the offending vehicle and the fact that such an accident had occurred. They denied negligence on the part of the 2nd respondent-driver and pointed out that the vehicle was insured with the 3rd respondent-insurer. The 3rd respondent-insurer remained absent, and the insurer was set ex-parte.

3. Before the Tribunal, Exts.A1 to A8 were marked on the side of the claimant. Both sides have chosen not to adduce any oral evidence. After considering the pleadings and materials on record, the Tribunal fixed 50% contributory negligence on the part of the rider of the two-wheeler, who was not even a party to the claim petition. Under different heads, the Tribunal fixed a total compensation of Rs.57,922/-. Less 50% towards contributory negligence on the part of the rider of the two-wheeler, on which the claimant was the pillion rider, the Tribunal awarded a sum of Rs.28,961/- together with interest at the rate of 8% per annum from 30.10.2010 with proportionate costs. The 1st respondent-owner and the 3rd respondent-insurer were held jointly and severally liable to pay compensation to the claimant. The 3rd respondent-insurer was directed to deposit the amount by way of cheque, in the name of the claimant, within 30 days from the date of receipt of a copy of the award, and issue a cheque on remitting the court fee.

4. This appeal is one filed along with C.M.Appl.No.1474 of 2011 to condone the filing delay of 27 days. By the order dated 19.06.2019, the delay was condoned. On 03.03.2022, when this appeal came up for admission, the learned Standing Counsel for

New India Assurance Company entered appearance for the 3rd respondent-insurer. Since the insurer has admitted the insurance coverage of the offending vehicle, service of notice on respondents 1 and 2 was dispensed with.

5. Heard the arguments of the learned counsel for the appellant-claimant and the learned Standing Counsel for the 3rd respondent-insurer.

6. The issue that requires consideration in this appeal is as to whether any interference is warranted on the award passed by the Tribunal in O.P.(MV)No.2340 of 2004.

7. The learned counsel for the appellant-claimant would contend that the compensation awarded by the Tribunal under different heads does not represent 'just and reasonable' compensation, which requires enhancement. Further, the finding of the Tribunal on contributory negligence and the consequential deduction of 50% of the compensation amount fixed in the award are legally unsustainable, and the claimant is entitled to the entire compensation awarded by the Tribunal, and the additional compensation claimed in this appeal, without limiting the same to 50%.

8. On the other hand, the learned Standing Counsel for

the 3rd respondent-insurer would contend that the appellant-claimant is not entitled to enhancement of the compensation awarded by the Tribunal under different heads. Further, the finding of the Tribunal in the impugned award on contributory negligence and the consequential deduction of 50% of the compensation amount fixed in the award warrant no interference.

9. In **State of Haryana v. Jasbir Kaur [(2003) 7 SCC 484]**, the Apex Court held that the Tribunal under Section 168 of the Motor Vehicles Act, 1988 is required to make an award determining the amount of compensation which is to be in the real sense 'damages', which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But, at the same time, it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

10. In **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]**, a Constitution Bench of the Apex Court held that, Section 168 of the Motor Vehicles Act, 1988 deals

with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision based on materials brought on record in an individual case. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principles of equitability.

11. The compensation awarded by the Tribunal under different heads is as follows;

Heads of the Claim	Amt claimed (In Rs)	Amt awarded (In Rs)	
Loss of earnings from 26.08.04 to 31.10.04	10000.00	7000.00	3500x2
Partial loss of income	10000.00	00.00	
Damage to clothing and articles	800.00	500.00	
Transportation expenses	2400.00	2000.00	Bills
Extra nourishment	3000.00	500.00	
Medicine & treatment expenses	23000.00	20422.00	
Compensation for pain and sufferings	25000.00	15000.00	
Compensation for loss of amenities and enjoyment of life	50000.00	10000.00	

Attendance expenses		2500.00	Not claimed
TOTAL		**Rs.57,922.00**	
Less: 50% contributory negligence on the part of the rider of the two-wheeler		28961.00	
Total		**Rs.28,961.00**	

12. The accident occurred on 28.06.2004 while the appellant-claimant was travelling on a two-wheeler bearing Reg.No.KL-08/W-9072, as a pillion rider. At the place of accident, the two-wheeler was hit by a stage carriage bearing Reg.No.KL-07/AN-4708, owned by the 1st respondent, driven by the 2nd respondent and insured with the 3rd respondent. After considering the pleadings and materials on record, the Tribunal fixed 50% contributory negligence on the part of the rider of the two-wheeler, who was not even a party to the claim petition. Under different heads, the Tribunal fixed a total compensation of Rs.57,922/-. Less 50% towards contributory negligence on the part of the rider of the two-wheeler, the Tribunal awarded a sum of Rs.28,961/- together with interest at the rate of 8% per annum from 30.10.2010 with proportionate costs.

13. In **N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal [(1980) 3 SCC 457]**, the Apex Court held that Motor Accidents

Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape from liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Tribunals should not succumb to niceties, technicalities and mystic maybes.

14. In **Kusum Lata v. Satbir [(2011) 3 SCC 646]**, the Apex Court held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The court must keep this distinction in mind.

15. In **Parmeshwari v. Amir Chand [(2011) 11 SCC 635]**, the Apex Court reiterated that in a road accident claim, the strict principles of proof as in a criminal case are not attracted. In the said decision, the Apex Court had taken note of the observation made in its earlier decision in **Bimla Devi v. Himachal Road Transport Corporation [(2009) 13 SCC 530]** that the claimants were merely to establish their case on the touchstone of preponderance of probabilities and that standard of proof beyond reasonable doubt could not have been applied.

16. In **Sherin J. Thankom v. Thankom [2014 (3) KLT**

44], a Division Bench of this Court held that, in deciding matters arising out of accident cases, the Motor Accidents Claims Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Tribunal is neither a criminal case nor a civil case. In such a claim, the standard of proof is much lower than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal, there must be some material based on which the Tribunal can arrive at or decide things necessary to be decided for awarding compensation.

17. In the instant case, the document marked as Ext.A1 is a copy of the First Information Report (FIR) in Crime No.2004/04 of Kochi City Traffic Police Station, whereby the 2nd respondent-driver of the stage carriage bearing Reg.No.KL-07/AN-4708 was charge-sheeted under Section 279 (rash driving or riding on a public way), Section 337 (causing hurt by act endangering life or personal safety of others) and Section 338 (causing grievous hurt by act endangering life or personal safety of others) of the Indian Penal Code, 1860. In paragraph 6 of the impugned award, the Tribunal noticed that Ext.A1 FIR, Ext.A3 wound certificate and Ext.A5 charge sheet laid against the 2nd respondent-driver of stage carriage bearing Reg.No.KL-07/AN-4708, under Sections 279, 337

and 338 of the Indian Penal Code, 1860, confirm the allegation that an accident occurred on 28.06.2004 and the claimant sustained injuries in that accident. The Tribunal, placing reliance on Ext.A2 scene mahazar and Ext.A4 inspection report of the stage carriage prepared by the Assistant Motor Vehicles Inspector (AMVI), concluded that there is contributory negligence on the part of the rider of two-wheeler bearing Reg.No.KL-08/W-9072, on which the claimant was travelling as a pillion rider. The Tribunal has also noticed that the claimant has not produced the inspection report of the two-wheeler involved in the accident.

18. In the decision in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KHC 595]**, a Division Bench of this Court held that, as a general rule, it can safely be accepted that <u>production of the police charge sheet is prima facie sufficient evidence of negligence</u> for a claim under Section 166 of the Motor Vehicles Act. If any one of the parties do not accept such charge sheet, <u>the burden must be on such party to adduce oral evidence</u>. If oral evidence is adduced by any party, in a case where a charge sheet is filed, the Tribunals should give further opportunity to others also to adduce oral evidence, and <u>in such a case the charge sheet will pale into insignificance</u>. Then the dispute will have to be

decided based on evidence. In all other cases such a charge sheet can be reckoned sufficient evidence of negligence in a claim under Section 166 of the Motor Vehicles Act.

19. As already noticed hereinbefore, in paragraph 6 of the impugned award, the Tribunal noticed that Ext.A1 FIR, Ext.A3 wound certificate and Ext.A5 charge sheet laid against the 2nd respondent-driver of stage carriage bearing Reg.No.KL-07/AN-4708, under Sections 279, 337 and 338 of the Indian Penal Code, 1860, confirm the allegation that an accident occurred on 28.06.2004 and the claimant sustained injuries in that accident. In view of the law laid down in the decision of a Division Bench in **Pazhaniammal [2011 (3) KHC 595]**, the production of Ext.A1 FIR in Crime No.2004/04 of Kochi City Traffic Police Station and Ext.A5 charge sheet, whereby the 2nd respondent-driver of the stage carriage bearing Reg.No.KL-07/AN-4708 was charge-sheeted under Sections 279, 337 and 338 of the Indian Penal Code, is prima facie sufficient evidence of negligence on the part of the 2nd respondent-driver of the stage carriage, for a claim under section 166 of the Motor Vehicles Act. When the rider of two-wheeler bearing Reg.No.KL-08/W-9072, on which the claimant was travelling as a pillion rider, was never charge-

sheeted by the Police under Sections 279, 337 or 338 of the Indian Penal Code, the Tribunal committed a grave error in arriving at a finding that there is contributory negligence on the part of the rider of the two-wheeler, even in the absence of any oral evidence adduced by the respondents, by placing reliance on Ext.A2 scene mahazar and Ext.A4 inspection report of the stage carriage prepared by the AMVI, and drawing an adverse inference against the claimant on account of non-production of the inspection report of the two-wheeler.

20. In **Sudhir Kumar Rana v. Surinder Singh [(2008) 12 SCC 436]**, the Apex Court held that 'contributory negligence' may be defined as negligence in not avoiding the consequences arising from the negligence of some other person, when means and opportunity are afforded to do so. The question of contributory negligence would arise only when both parties are found to be negligent. In **Meera Devi v. H.P. Road Transport Corporation [(2014) 4 SCC 511]**, a Three-Judge Bench of the Apex Court reiterated that to prove contributory negligence there must be cogent evidence.

21. In **Yashwant Krishna Kumbar v. Divisional Manager, United India Insurance Co. Ltd. [2025 ACJ 2687**

(SC)], the Apex Court was dealing with a case in which both the Tribunal and the High Court, upon assessment of the material available on record, recorded a concurrent finding that accident occurred on account of the negligence of the riders of both motorcycles, i.e., the rider of the offending motorcycle as well as the rider of the motorcycle on which the claimant was travelling as a pillion rider. In view of the said finding, both the Tribunal and the High Court held that the owner and insurer of the offending motorcycle would be liable to satisfy only 50% of the total compensation determined.

22. In **Yashwant Krishna Kumbar [2025 ACJ 2687 (SC)]**, the Apex Court held that the principle of contributory negligence mandates a specific inquiry into the conduct of the injured person and as to how he has contributed his negligence to the accident, and it cannot be inferred vicariously from the conduct of the rider. Even if the riders of both motorcycles are assumed to have been negligent, the case would fall within the realm of composite negligence, and the claimant, being a third-party passenger, cannot be held to be responsible or having contributed to the accident. In such circumstances, the claimant is entitled to recover the entire compensation from any one of the

tortfeasors, and there is no legal warrant for reducing the award on account of apportionment of negligence between the riders.

23. In view of the law laid down by the Apex Court in **Yashwant Krishna Kumbar [2025 ACJ 2687 (SC)]**, contributory negligence cannot be inferred vicariously from the conduct of the rider of two-wheeler bearing Reg.No.KL-08/W-9072 on which the appellant-claimant was travelling as a pillion rider. The principle of contributory negligence mandates a specific inquiry into the conduct of the appellant-claimant, who is the injured person, and as to how he has contributed to the accident by any negligence on his part. Even if the 2nd respondent-driver of stage carriage bearing Reg.No.KL-07/AN-4708 and the rider of two-wheeler bearing Reg.No.KL-08/W-9072 are assumed to have been negligent, the case would fall within the realm of composite negligence, and the appellant-claimant, being a third-party pillion rider on the two-wheeler, cannot be held to be responsible or having contributed to the accident. In such circumstances, the appellant-claimant is entitled to recover the entire compensation from any one of the tortfeasors, and there is no legal warrant for reducing the award on account of apportionment of negligence between the driver of the stage carriage and the rider of the two-

wheeler.

24. In the result, the findings of the Tribunal in the impugned award for fixing 50% contributory negligence on the part of the rider of two-wheeler bearing Reg.No.KL-08/W-9072 and the consequential deduction of 50% of the compensation amount fixed in the said award are set aside, and the appellant-claimant is held entitled to the entire compensation amount of Rs.57,922/- together with interest at the rate of 8% per annum from 30.10.2010 with proportionate costs. Consequently, the appellant-claimant will be entitled to an additional compensation of **Rs.28,961/-** in this appeal, with interest at the rate of 8% per annum with proportionate costs.

25. The accident had occurred on 28.06.2004. In the claim petition, it was stated that at the time of the accident the claimant was a welder by profession, earning a monthly income of Rs.5,000/-. To prove the monthly income, Exts.A7 and A8 salary certificates were produced. The claimant has chosen not to mount the box to prove his monthly income. He has also chosen not to prove Exts.A7 and A8 salary certificates. The claimant was aged 30 years at the time of the accident. Considering the claimant’s age at the time of the accident, the Tribunal has taken his monthly

income notionally as Rs.3,500/-, for the purpose of awarding compensation under different heads.

26. In **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]**, the Apex Court reckoned the monthly income of a coolie (manual labourer), who met with a road accident in the year 2004, at the age of 35 years, notionally as Rs.4,500/-. The Apex Court held that the claimant, who was working as a coolie, cannot be expected to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, the Apex Court held that, in the facts of the said case, the Tribunal should have accepted the claim of the claimant regarding his monthly income.

27. In **Ramachandrappa [(2011) 13 SCC 236]**, the Apex Court has made it clear that, in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant, in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim, and the Tribunal may proceed to determine the possible income by resorting to some guesswork,

which may include the ground realities prevailing at the relevant point of time.

28. In **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd. [(2014) 2 SCC 735]**, taking note of the earlier decision in **Ramachandrappa [(2011) 13 SCC 236]**, the Apex Court reckoned the monthly income of a <u>vegetable vendor</u>, who met with a road accident <u>in the year 2008</u>, at the age of 24 years, notionally as Rs.6,500/-. In the said decision, the Apex Court held that a <u>labourer in an unorganised sector doing his own business</u> cannot be expected to produce documents to prove his monthly income. Therefore, there was no reason for the Tribunal and the High Court to require <u>evidence to prove his monthly income</u>. Going by the state of the economy prevailing at that time and the rising prices in agricultural products, the Apex Court accepted his case that a vegetable vendor is reasonably capable of earning <u>Rs.6,500/-</u> per month.

29. In **Amarveer Kaur v. Reliance General Insurance Company Ltd. [2025 SCC OnLine SC 980]**, the Apex Court was dealing with a case in which, before the Tribunal, the claimants had raised a contention that the deceased was employed <u>in a rice mill as an accountant</u> and he was paid Rs.15,000/- per month.

One Jagdish Rai was examined as PW3, who asserted that he was the proprietor of the rice mill but, during cross-examination, he specifically stated that he did not maintain any books of account in the mill and though he was paying provident fund for all his employees, there was no such payment made with respect to the deceased. The educational qualification of the deceased to enable him to work as an accountant was also not proved. The Apex Court found that the High Court rightly rejected the evidence of PW3. The High Court computed the monthly income as Rs.3,700/-, as applicable to an unskilled worker, looking at the minimum wages fixed by the State of Punjab for such workers. It was not clear from which document or notification the Tribunal had taken such an income.

30. In **Amarveer Kaur [2025 SCC OnLine SC 980]**, the Apex Court noticed that as far as the income for an unskilled labourer is concerned, the Court in **Ramachandrappa [(2011) 13 SCC 236]** fixed the notional monthly income of a coolie as Rs.4,500/- in the year 2004. In **Pranay Sethi [(2017) 16 SCC 680]**, the Constitution Bench recognised the principle that there would be incremental enhancement even for self-employed individuals in the unorganised sector and proposed an increase in

the income of such persons as future prospects. The Apex Court opined that, applying the said logic, even if the deceased was working in an unspecified job like a coolie, considering the increase in the cost of living and economic advancements over the years, it can be safely assumed that even a coolie would be eligible for incremental enhancement of wages of at least Rs.500/- per month in every subsequent year. In the case at hand, the accident occurred in the year 2010, six years from 2004, in which year the Court had fixed Rs.4,500/- as monthly income for a coolie. Hence, it can be safely presumed that a coolie in the year 2010 would have earned an income of Rs.7,500/-.

31. In **Dhannalal @ Dhanraj (Dead) Through LRs. v. Nasir Khan [2025 SCC OnLine SC 2083]**, the Apex Court was dealing with a case in which the accident was of the year 2013. The case of the claimant was that he was earning a monthly income of Rs.10,000/-, out of which Rs.8,000/- per month was from the job of a Mistry in the shop of a person who was examined as AD-02, and Rs.2,000/- was from the agricultural lands owned by him. The Tribunal took the monthly income as Rs.4,000/-. No documentary evidence was submitted to prove the salary or the agricultural income. Though the Tribunal at the earlier stage had

adopted Rs.8,000/- as the monthly income of the claimant, on remand Rs.4,030/- was accepted as the monthly income.

32. In **Dhannalal @ Dhanraj [2025 SCC OnLine SC 2083]**, the Apex Court noticed that in **Ramachandrappa [(2011) 13 SCC 236]** it was held that a Coolie was entitled to Rs.4,500/- as monthly income in the year 2004. Definitely, there would be an incremental increase of income in the succeeding years, which the Apex Court determined at Rs.500/- per year, which brought the total income so computed to Rs. 9,000/- as on 2013. Because the claimant was engaged as a skilled worker, for which oral evidence was adduced, the Apex Court opined that Rs.9,000/- can be safely accepted as his monthly income at the time of the accident, i.e., as on 2013.

33. In the instant case, the accident had occurred in the year 2004. In the claim petition, the appellant-claimant has stated that he was a welder by profession, earning a monthly income of Rs.5,000/-. Exts.A7 and A8 salary certificates were produced to prove monthly income. The claimant has not chosen to mount the box to prove his monthly income. He has also not chosen to prove Exts.A7 and A8 salary certificates. Therefore, the Tribunal took his monthly income notionally as Rs.3,500/-. Taking note of the

notional fixation of monthly income by the Apex Court in **Ramachandrappa [(2011) 13 SCC 236]**, the notional monthly income of the appellant-claimant as on 2004 can reasonably be taken as Rs.4,500/-, for the purpose of awarding compensation under different heads. Since the accident is of the year 2004, the notional fixation of monthly income by the Apex Court in **Syed Sadiq [(2014) 2 SCC 735]** and the principle laid down by the Apex Court in **Amarveer Kaur [2025 SCC OnLine SC 980]** and **Dhannalal @ Dhanraj [2025 SCC OnLine SC 2083]** for incremental enhancement of wages have no application in the notional fixation of monthly income of the appellant-claimant. In the result, the notional monthly income fixed by the Tribunal in the impugned award as Rs.3,500/- is re-fixed as **Rs.4,500/-**, for the purpose of awarding compensation under different heads.

34. In the accident, the appellant-claimant sustained various injuries, as borne out from Ext.A3 wound certificate. The Tribunal noticed those injuries at paragraph 9 of the impugned award, which are as follows;

> "Laceration on left eyebrow;
> Abrasion on left shoulder, left elbow and left leg;
> Contusion on right leg, fracture shaft of right femur."

35. The appellant-claimant had undergone inpatient

treatment for 11 days at Ernakulam Medical Centre. Ext.A6 medical bills are for a sum of Rs.34,633/-. In the impugned award, the Tribunal found that the medical bills spread over a period up to October 2008, though the claimant was discharged on 10.07.2004. In the absence of any reliable evidence, the Tribunal limited the medical and treatment expenses to Rs.20,422/-, after deducting the amounts covered by medical bills for the period beyond 10.07.2004. The amount mentioned in the trip sheets, 4 in number, was considered by the Tribunal under a separate head, i.e., transportation expenses. Considering the nature of injuries sustained in the accident, which includes 'fracture shaft of right femur', the compensation awarded by the Tribunal under the head medical and treatment expenses is refixed as Rs.25,000/-. In the result, the appellant-claimant will be entitled to an additional compensation of **Rs.4,578/-** (25,000 – 20,422) under this head.

36. On account of the injuries sustained in the accident, the appellant-claimant had undergone inpatient treatment for 11 days at Ernakulam Medical Centre. Towards bystander expenses, the appellant claimed a sum of Rs.15,000/- at the rate of Rs.3,000/- for the period from 25.07.2004 to 30.12.2004. Ext.A8 is a stamped receipt stated to have been issued by one Sanju,

S/o.Kailasan. The claimant has not chosen to prove Ext.A8 bill towards bystander expenses. The claimant has not even chosen to mount the box. The accident is of the year 2004. In the absence of any reliable evidence, the Tribunal granted an amount of Rs.2,000/- towards bystander expenses (attendant expenses), for 11 days of inpatient treatment. The amount awarded by the Tribunal under the said head requires no enhancement in this appeal. Towards transportation expenses, the Tribunal awarded a sum of Rs.2,000/-, covered by the trip sheets, 4 in number. The amount awarded by the Tribunal under this head also requires no enhancement in this appeal. Towards extra nourishment, the Tribunal awarded a sum of Rs.500/-. Since the accident is of the year 2004, the amount under this head is refixed as Rs.1,100/- (100 x 11). In the result, the appellant-claimant will be entitled to an additional compensation of **Rs.600/-** (1,100 - 500) under this head. Towards damage to clothing and articles, the Tribunal awarded a sum of Rs.500/-. Since the accident is of the year 2004, the amount under this head is refixed as Rs.750/-. In the result, the appellant-claimant will be entitled to an additional compensation of **Rs.250/-** (750 - 500) under this head.

37. Towards loss of earnings, the Tribunal awarded a sum

of Rs.7,000/-, for a period of two months, at the rate of Rs.3,500/- per month. Towards partial loss of income, the appellant-claimant claimed a sum of Rs.10,000/-. Though the claimant filed I.A.No.2230 of 2010 before the Tribunal for assessment of permanent disability, that application was dismissed. Before the Tribunal, the claimant has no specific case regarding any permanent disability adversely affecting his earning capacity.

38. In the memorandum of appeal, which is dated 04.07.2011, the appellant-claimant has not stated the nature of permanent disability on account of the injuries sustained in the accident, which includes 'fracture shaft of right femur', adversely affecting his earning capacity. The appellant also has no case of any mal-union of 'fracture shaft of right femur'. No application, supported by reliable documents, is filed along with this appeal to refer the appellant to a Medical Board to assess any permanent disability, adversely affecting his earning capacity. In the absence of any specific pleadings regarding the nature of any permanent disability on account of the injury 'fracture shaft of right femur' sustained in the accident, the Tribunal cannot be faulted with in not awarding the claimant any amount under the head disability compensation.

39. Considering the nature of injuries sustained in the accident, which includes 'fracture shaft of right femur', and the treatment the appellant-claimant had undergone, as borne out from medical records, the claimant can be granted loss of earnings for a period of four months at the rate of Rs.4,500/- per month, instead of loss of earnings for a period of two months awarded by the Tribunal at the rate of Rs.4,500/- per month. Therefore, the compensation under the head loss of earnings is refixed as Rs.18,000/- (4,500 x 4). In the result, the appellant-claimant will be entitled to an additional compensation of **Rs.11,000/-** (18,000 – 7,000) under this head.

40. Towards pain and sufferings, the Tribunal awarded a sum of Rs.15,000/-. Towards loss of amenities and enjoyment of life, the Tribunal awarded a sum of Rs.10,000/-. Considering the nature of injuries sustained and the treatment the appellant-claimant had undergone, as borne out from the medical records, the compensation under the head pain and sufferings cannot be said to be on the lower side. In the absence of any reliable materials to show permanent disability on account of the injuries sustained in the accident, which includes 'fracture shaft of right femur', the appellant cannot raise a contention that the

compensation awarded by the Tribunal under the head loss of amenities and enjoyment of life is on the lower side. Therefore, the appellant-claimant is not entitled to any additional compensation under the above heads.

41. Though the claim petition was filed before the Tribunal on 01.10.2004, the same was dismissed for default on 06.12.2008, as the claimant did not turn up for adducing evidence. The claim petition was restored to file by the order of the Tribunal dated 30.10.2010 in I.A.No.2987 of 2010. The claimant filed that application for restoration only on 14.05.2010. In the impugned award, the Tribunal held that the claimant will be entitled to interest for the award amount only from the date of restoration of the claim petition, i.e., 30.10.2010. In the appeal, one of the contentions raised by the appellant-claimant is that the Tribunal went wrong in declining interest from the date of filing of the claim petition till 06.12.2008 and thereafter from 30.10.2010 till the date of award, i.e., 31.12.2010.

42. Section 171 of the Motor Vehicles Act deals with award of interest where any claim is allowed. As per Section 171, where any Claims Tribunal allows a claim for compensation made under the Act, such Tribunal may direct that in addition to the amount

of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

43. In **New India Assurance Company Ltd. v. Hansaben Sureshbhai Prajapati [2025 SCC OnLine SC 3453]**, the Apex Court was dealing with a case in which the sole issue raised by the appellant-insurer was whether the claimants are entitled to the interest on the compensation amount for the period of delay of 726 days in filing the appeal before the High Court in 2009 and for the period of delay of 3,700 days in filing the restoration application before the High Court in 2021 against the dismissal order dated 23.12.2010 passed by the High Court for non-prosecution by the claimants.

44. In **Hansaben Sureshbhai Prajapati [2025 SCC OnLine SC 3453]**, the Apex Court agreed with the position adopted by the appellant-insurer to the effect that a person should not be rewarded for tardiness, inasmuch as the final compensation would have included interest on the large delay on the part of the claimants in filing the appeal, thereby rewarding monetarily the stance of not seeking to enforce one's rights. As such, the Apex Court was of the considered view that no interest should be

awarded to the claimants for the entire period of delay, i.e., 726 days in filing the appeal before the High Court and 3,700 days in filing the restoration application.

45. In the instant case, as already noticed hereinbefore, though the claim petition was filed before the Tribunal on 01.10.2004, the same was dismissed for default on 06.12.2008, as the claimant did not turn up for adducing evidence. The claimant filed I.A.No.2987 of 2010, the application for restoration, on 14.05.2010, and the claim petition was restored to file by the order of the Tribunal dated 30.10.2010. In view of the decision of the Apex Court in **Hansaben Sureshbhai Prajapati [2025 SCC OnLine SC 3453]**, the appellant-claimant is not entitled to interest for the compensation awarded by the Tribunal in the impugned award and also for the additional compensation to be granted in this appeal, for the period of delay of 524 days from 06.12.2008 till 14.05.2010, i.e., from the date on which the claim petition was dismissed for default, till the date of filing the application for restoration, less 30 days from the date of dismissal prescribed under Article 122 of the Limitation Act, 1963, for filing such an application for restoration. Therefore, the appellant-claimant will be entitled to interest from the date of filing of the

claim petition, i.e., 01.10.2004 till the date of award, i.e., 31.12.2010, excluding the period of delay of 524 days from 06.12.2008 till 14.05.2010 in filing the restoration application, less 30 days from the date of dismissal prescribed under Article 122 of the Limitation Act, 1963, for filing such an application for restoration. In that view of the matter, the finding to the contrary in the impugned award dated 31.12.2010 of the Tribunal cannot be sustained in law.

46. The aforesaid finding of the Tribunal in the impugned award dated 31.12.2010 is accordingly set aside, and the appellant-claimant is found entitled to interest for the compensation awarded by the Tribunal in the impugned award and also for the additional compensation to be granted in this appeal, <u>from 01.10.2004 till 31.12.2010</u>, i.e., from the date of filing of the claim petition till the date of award, excluding the period of delay of 524 days <u>from 06.12.2008 till 14.05.2010</u> in filing the restoration application, less 30 days from the date of dismissal prescribed under Article 122 of the Limitation Act, 1963, for filing such an application for restoration to restore the claim petition which was dismissed for default on 06.12.2008.

47. In the above circumstances, the appellant-claimant will

be entitled to an additional compensation of Rs.16,428/- (4,578 + 600 + 250 + 11,000) in this appeal. Since the finding of the Tribunal in the impugned award fixing 50% contributory negligence on the part of the rider of the two-wheeler on which the claimant was travelling as a pillion rider is set aside, the appellant-claimant will also be entitled tor payment of a further sum of Rs.28,961/- together with interest, towards 50% of the compensation amount deducted by the Tribunal based on the finding on contributory negligence of the rider of the two-wheeler.

48. In the result, the appellant-claimant will be entitled to payment of an additional compensation of **Rs.45,389/-** (16,428 + 28,961), together with **8%** interest per annum from 01.10.2004 till 31.12.2010, i.e., from the date of filing of the claim petition till the date of award, excluding the period of delay of 524 days from 06.12.2008 till 14.05.2010 in filing the restoration application, less 30 days from the date of dismissal prescribed under Article 122 of the Limitation Act, 1963, for filing such an application for restoration to restore the claim petition which was dismissed for default on 06.12.2008.

49. Since insurance coverage of the stage carriage bearing Reg.No.KL-07/AN-4708 at the time of accident is not in dispute,

the 3rd respondent insurer shall remit the additional compensation granted to the appellant-claimant in this appeal, together with interest and proportionate cost, in the bank account of the claimant, within a period of two months from the date of receipt of a certified copy of this judgment, after deducting the liability, if any, of the appellant-claimant towards Balance Court Fee and Legal Benefit Fund. The procedure for remittance of the additional compensation in the bank account of the claimant shall be in terms of High Court Circular No.1/2025 dated 19.09.2025, subject to modifications, if any, made by way of subsequent circulars.

This appeal is disposed of as above.

Sd/-
ANIL K. NARENDRAN, JUDGE

bkn/-