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MACA NO. 1962 OF 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE JOBIN SEBASTIAN

MONDAY, THE 12TH DAY OF JANUARY 2026 / 22ND POUSHA, 1947MACA NO. 1962 OF 2020AGAINST THE COMMON AWARD DATED 30.10.2018 IN O.P(M.V)
NO. 2536 OF 2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR**APPELLANT/PETITIONER:**

BINEESH
AGED 30 YEARS
S/O. SUBRAMANIAN, VIYYATH HOUSE,
P.O. MARATHAKKARA, THRISSUR DT. 680306.

BY ADVS.
SRI. A. R. NIMOD
SRI. M. A. AUGUSTINE

RESPONDENTS/RESPONDENTS:

- 1 MATHEW JOSEPH
S/O. JOSEPH, 1/335, PUDUPERIYARAM, PALAKKAD-678733.
- 2 SIJO MATHEW,
S/O. MATHEW, MANIYAMPARAYIL HOUSE, NOCHIPULLY,
PUDUPERIYARAM-678733, PALAKKAD.
- 3 THE UNITED INDIA INSURANCE CO. LTD, DO, PALAKKAD,
PB NO. 92, 3RD FLOOR, 11/82, MALABAR FORT, OFF GB
ROAD, PALAKKAD-678001, REPRESENTED BY BRANCH
MANAGER.

BY ADV SHRI. P. K. MANOJKUMAR, FOR THE INSURANCE
COMPANY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 12.01.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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"C.R."**JUDGMENT***Dated this the 12th day of January, 2026*

The petitioner in O.P.(M.V.) No.2536/2011 on the file of the Motor Accidents Claims Tribunal, Thrissur, has filed this appeal seeking enhancement of the compensation awarded by the Tribunal on account of the injuries sustained by him in a motor accident that occurred on 03.09.2011.

2. The case of the petitioner/appellant in the original petition is that, on 03.09.2011, while he was riding a motorcycle bearing registration No.KL-8-AD-531 along the Sakthan Thampuran-Kattukkaran public road, with two passengers on the pillion, and when the motorcycle reached Kattukkaran Junction, a jeep bearing registration No. KL-9-B-2930, driven by the 2nd respondent in a rash and negligent manner, hit the motorcycle. Due to the impact, the petitioner as well as the pillion riders were thrown onto the road and sustained serious injuries.

3. The owner and driver of the jeep were arrayed as the



1st and 2nd respondents, respectively, whereas the insurer was arrayed as the 3rd respondent.

4. In response to the notice issued, all the respondents entered appearance and filed separate written statements. The 1st and 2nd respondents contended that the accident occurred due to the rash and negligent driving of the petitioner himself and that he was therefore not entitled to any compensation.

5. The 3rd respondent insurance company filed a written statement mainly disputing the quantum of compensation claimed. It was contended that the petitioner was riding the motorcycle with two pillion riders and that the accident occurred due to the negligence of the petitioner. However, the 3rd respondent admitted that the jeep involved in the accident was covered by a valid insurance policy.

6. During trial, the documents produced by the petitioner were marked as Exts.A1 to A19. From the side of the respondents, a copy of the insurance policy was produced and marked as Ext.B1.

7. After trial, the Tribunal concluded that the accident



occurred mainly due to the rash and negligent driving of the jeep bearing registration No.KL-9-B-2930 by the 2nd respondent, and being the insurer, the 3rd respondent was held liable to pay compensation. Nevertheless, the Tribunal found that by carrying two pillion riders on the motorcycle, the petitioner was guilty of contributory negligence to the extent of 20%. The total compensation was quantified at Rs.1,84,800/- with interest at the rate of 8% per annum from the date of petition till realization, along with proportionate costs. After deducting 20% towards contributory negligence, the petitioner was held entitled to Rs.1,47,840/-. Dissatisfied with both the quantum of compensation awarded and the finding of contributory negligence, the petitioner has preferred the present appeal.

8. I heard Sri. Nimod A. R., the learned counsel appearing for the appellant, and Sri. P. K. Manoj Kumar, the learned standing counsel appearing for the respondent insurance company.

9. The learned counsel for the appellant/petitioner submitted that the compensation awarded by the Tribunal under



various heads is grossly inadequate and does not compensate the actual loss and damages suffered by the petitioner. It was contended that the Tribunal erred in assessing the income of the petitioner at a low figure and consequently awarded meagre compensation under the heads of permanent disability and loss of earnings. The learned counsel further submitted that the Tribunal failed to properly appreciate the seriousness of the injuries and the prolonged treatment undergone by the petitioner, and awarded only nominal amounts under the heads of pain and sufferings and loss of amenities and enjoyment of life. It was also contended that the Tribunal wrongly attributed contributory negligence to the petitioner merely on the ground that he was carrying two pillion riders on the motorcycle. On these grounds, interference with the impugned award was sought.

10. Per contra, the learned standing counsel for the respondent insurance company submitted that the compensation awarded by the Tribunal is just, fair, and reasonable. It was argued that the Tribunal had awarded amounts under various heads even in excess of the claim made in the petition. It was



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further contended that carrying more than one pillion rider on a motorcycle amounts to negligence and therefore the finding of contributory negligence cannot be faulted.

11. From the rival contentions raised, it is evident that the principal issue arising in this appeal relates to the adequacy of the compensation awarded by the Tribunal. As seen from the impugned award, the Tribunal assessed the monthly income of the petitioner at Rs.4,500/- for the purpose of calculating compensation under the heads of permanent disability and loss of earnings. Though the petitioner claimed that he was working as a welder earning Rs.7,500/- per month, no documentary or oral evidence was produced to substantiate the said claim.

12. However, it is not in dispute that the accident occurred in the year 2011. Having regard to the year of the accident and in the light of the decision of the Apex Court in ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd.*** [(2011) 13 SCC 236], the Tribunal ought to have assessed the notional monthly income of the petitioner at Rs.8,000/-.



13. To establish permanent disability, the petitioner produced a disability certificate issued by a doctor, marked as Ext.A11. A perusal of Ext.A11 shows that the petitioner suffered 13% permanent disability due to the injuries sustained in the accident. However, the Tribunal reduced the disability to 10% without assigning any convincing reason. If the Tribunal had any doubt regarding the correctness of the disability assessed, the appropriate course open to it was to refer the petitioner to a Medical Board for reassessment, rather than arbitrarily reducing the percentage.

14. The medical records reveal that the petitioner suffered a fracture of both bones in the right leg, along with multiple abrasions and lacerated wounds. Considering the nature of the injuries, the assessment of 13% permanent disability in Ext.A11 is reasonable and acceptable. The petitioner was aged 22 years at the time of the accident, and as per the decision in ***Sarla Verma v. Delhi Transport Corporation*** [2010 (2) KLT 802 (SC)], the appropriate multiplier is 18. Accordingly, the petitioner is entitled to Rs.2,24,640/- [Rs.8,000 × 12 × 18 × 13/100] under the head of permanent disability. Since the Tribunal has



already awarded Rs.91,800/- under this head, the petitioner is entitled to an additional amount of Rs.1,32,840/-.

15. Consequent to the revision of the monthly income, enhancement is also required under the head of loss of earnings. Likewise, the Tribunal awarded compensation under the head of loss of earnings only for a period of six months. Notably, the petitioner underwent 15 days of inpatient treatment and sustained serious injuries. In such circumstances, it is reasonable to hold that the petitioner would have been unable to work for at least eight months. Accordingly, he is entitled to get an amount of Rs.64,000/- [Rs.8,000 × 8] under the head of loss of earnings. After deducting the amount already awarded by the Tribunal under the said head, the petitioner is entitled to an additional amount of Rs.37,000/- under this head.

16. Considering the nature of the injuries and the pain and suffering endured by the petitioner, I am of the view that an additional compensation of Rs.35,000/- is to be awarded under the head of pain and sufferings. Though the petitioner had claimed only Rs.3,500/- under this head, it is well settled that



strict rules of pleadings are not applicable in motor accident claims. The provision contained under the Motor Vehicles Act for the grant of compensation is beneficial legislation, and it is the duty of the Tribunal and the Court to award just and reasonable compensation, even exceeding the amount claimed, if circumstances so warrant.

17. The injuries and prolonged treatment have undoubtedly affected the petitioner's enjoyment of life. Considering the inconvenience and hardship suffered, an additional amount of Rs.35,000/- is awarded under the head of loss of amenities and enjoyment of life.

18. The compensation awarded under the other heads does not warrant interference. Consequently, an amount of Rs.2,39,840/- (Rs.1,32,840/- + Rs.37,000/- + Rs.35,000/-) is to be added to the total compensation awarded by the Tribunal.

19. The next issue to be considered is whether the Tribunal was justified in deducting 20% of the compensation on the ground of contributory negligence solely because the



petitioner was carrying two pillion riders. While considering the question whether the mere carrying of two pillion riders on a motorcycle constitutes negligence, it is pertinent to note that while dealing with a similar situation, a Division Bench of this Court in ***Binoj Antony v. New India Assurance Company Ltd.*** (2014 (1) KLT 393), held that the mere fact that a motorcycle was carrying two pillion riders cannot ipso facto give rise to an inference of contributory negligence unless it is positively proved that such carrying of two pillion riders actually contributed to the accident. Likewise, the Supreme Court in ***Mohammed Siddique and Another v. National Insurance Company Ltd. and Others*** [(2020) 3 Supreme Court Cases 57] held that, the fact that deceased was riding pillion on a motorcycle along with driver and another beyond the permissible limit, may not, by itself, without anything more, make him guilty of contributory negligence, unless it is established that it contributed either to accident or to impact of accident upon victim.

20. Evidently, the motorcycle was carrying two pillion riders at the time of the accident. The mere fact of carrying more



than one pillion rider, though a violation of the provisions of the Motor Vehicles Act, cannot, by itself, give rise to a presumption of contributory negligence. For contributory negligence to be fastened, it must be established by reliable and cogent evidence that the act of carrying two pillion riders had a direct and proximate cause connection with the accident, such as impairing the control, balance, or maneuverability of the vehicle. The burden of proving such contributory negligence lies on the insurer or the respondent. In the absence of any material showing that the presence of two pillion riders contributed to or caused the accident, no deduction on the ground of contributory negligence can be made, and compensation cannot be reduced on a mechanical or hypothetical basis.

21. In the present case, no evidence has been adduced to show that the presence of two pillion riders affected the control or balance of the motorcycle or contributed to the accident. The burden of proving contributory negligence lay on the insurer, which has not been discharged. On the contrary, as evident from the records, the police registered a case against the 2nd respondent, the driver of the jeep, under Sections 279, 337, and



338 IPC and filed a final report against him. Likewise, as evident from the impugned award, after appreciating the evidence on record, including Ext.A2 scene mahazar, the Tribunal itself had found that one of the contentions raised by the 3rd respondent, namely, that the petitioner had ridden the motorcycle through the wrong side of the road, was not correct. Therefore, it is evident that the finding of contributory negligence entered by the Tribunal against the petitioner is arbitrary and unsupported by any evidence. Consequently, the 3rd respondent is liable to satisfy the award in its entirety, without any deduction on account of contributory negligence.

In the result, the appeal is allowed. The compensation is enhanced by Rs.2,39,840/- (Rupees Two Lakh Thirty-Nine Thousand Eight Hundred and Forty only), with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit, excluding interest for 304 days, being the period of delay in filing the appeal and as directed by this Court on 02.12.2020 in C.M.Appln. No.1/2020. The respondent insurance company shall deposit the enhanced compensation with interest and proportionate costs before the Tribunal within three months



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from the date of this judgment. Immediately on the compensation amount being deposited, the tribunal shall, after deducting the liability of the appellant/petitioner towards court fee, disburse the compensation amount to him in accordance with law.

Sd/-

JOBIN SEBASTIAN
JUDGE

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