



2025:KER:21995

MACA NO. 760 OF 2017 &
CO NO. 26 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 28TH DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946

MACA NO. 760 OF 2017

AGAINST THE ORDER/JUDGMENT DATED 10.01.2017 IN OPMV NO.1156
OF 2014 OF ADDITIONAL DISTRICT COURT & MOTOR ACCIDENT CLAIMS
TRIBUNAL ,PATHANAMTHITTA/ I ADDL. M.A.C.T. /M.A.C.T.,
PATHANAMTHITTA

APPELLANT/3RD RESPONDENT:

NEW INDIA ASSURANCE CO.LTD
T.P.HUB, KHAISE BUILDING, BEACH ROAD, OPP.BENZIGAR
HOSPITAL,KOLLAM, REPRESENTED BY ITS MANAGER,
REGIONAL OFFICE, ERNAKULAM

BY ADV SRI.P.G.GANAPPAN

RESPONDENTS/CLAIMANT & RESPONDENTS 1 & 2:

- 1 DEVADASAN PILLAI.P
 AGED 64 YEARS
 AGED 64 YEARS, S/O.PARAMESWARAN PILLAI, MYLOTTU
 VEEDU,ELANGAMANGALAM, ENATHU P.O.
- 2 JOSEPAUL
 S/O.PAUL JOSEPH, THEKUERMATTATHIL HOUSE,
 PUTHUPPADI P.O.,MUVATTUPUZHA
- 3 INDUS MOTORS CO. PVT. LIMITED
 INDUS HOUSE, P.B.NO.923, CHAKKRATHUKULAM, WEST
 HILL(P.O),CALICUT



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**BY ADVS.
SRI.A.N.SANTHOSH
SRI.P.K.ABOOBACKEREDAPPALLY**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 28.02.2025, ALONG WITH CO.26/2024, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 28TH DAY OF FEBRUARY 2025 / 9TH PHALGUNA, 1946

CO NO. 26 OF 2024

**AGAINST THE ORDER/JUDGMENT DATED IN MACA NO.760 OF 2017 OF
HIGH COURT OF KERALA**

CROSS OBJECTOR/RESPONDENT:

**DEVADASAN PILLAI,
AGED 73 YEARS
S/O. PARAMESWARAN PILLAI, AGED 73 YEARS, MYLOTTU
VEEDU, ENADIMANGALAM, ENATHU P.O, PATHANAMTHITTA
DISTRICT, PIN - 691526**

BY ADV A.N.SANTHOSH

RESPONDENT/APPELLANT:

**THE BRANCH MANGER, NEW INDIA ASSURANCE COMPANY LTD
TP HUB, KHAISE BUILDING, BEACH ROAD, OPP. BENZIGAR
HOSPITAL, KOLLAM, PIN - 691001**

**THIS CROSS OBJECTION/CROSS APPEAL HAVING COME UP FOR
ADMISSION ON 28.02.2025, ALONG WITH MACA.760/2017, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**



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J U D G M E N T

The 3rd respondent in OP (MV) No.1156/2014 on the files of Motor Accident Claims, Pathanamthitta, is the appellant in MACA No.760/2017 and the petitioner in the above OP is the cross objector. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The petitioner filed the above O.P. under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 26.06.2014. According to the petitioner, on 26.06.2014 at about 10:30pm., while he was riding a scooter, along Adoor-Kottarakkara MC road, a Maruti car bearing registration No.KL-17-TC-2011, driven by the 1st respondent in a rash and negligent manner hit against the scooter and as a result of which he fell down and sustained serious injuries.

3. The 1st respondent is the driver, the 2nd respondent is the owner and 3rd respondent is the insurer of the offending vehicle.



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4. According to the petitioner, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. is Rs.58,75,000/- limited to Rs.40,00,000/-

5. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

6. The evidence in the case consists of the oral testimony of PW1 and documentary evidence Exts.A1 to A15. No evidence was adduced by the respondents.

7. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.29,99,900 rounded off to Rs.30,00,000/- and directed the insurer to pay the same.

8. Aggrieved by the quantum of compensation awarded by the Tribunal, the Respondent No.3 preferred this appeal.

9. Now the point that arises for consideration is the following:

*Whether the quantum of compensation awarded by the
Tribunal is just and reasonable?*



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10. Heard Sri.A.N. Santhosh, the learned Counsel appearing for the cross objector/petitioner, and Sri.P.G.Ganappan, the learned Standing Counsel for the appellant/3rd respondent.

11. The Point: In this case the accident as well as valid insurance policy of the offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioner is regarding the income of the petitioner as fixed by the Tribunal. According to him, the petitioner was running a stationary shop, earning Rs.30,000/- per month, but the Tribunal fixed his monthly income at Rs.10000/-. In order to prove the fact that the petitioner was running a stationary shop, he had relied upon Exts.A12 and A14. Ext.A12 is the Tax receipts issued from Kulakkada Grama Panchayath for conducting stationary business in the name and style 'Vijaya Stores Kulakkada'. Ext.A14 is the telephone bills in the name of the petitioner in the address 'Vijaya Stores, Kulakkada'. The petitioner was also examined as PW1 to substantiate his claim that he was conducting a stationary shop. Therefore, from the evidence of PW1 and from Exts.A12 and A14, the petitioner has succeeded in establishing that he was running a stationary shop. It is true that in order to prove the actual income he derived from the



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stationary shop, there is no documentary evidence.

12. As per the decision in Hon'ble Supreme Court in ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.*** [2011 (13) SCC 236], the notional income of a coolie, in the year 2014 will come to Rs.9500/-. Since, from the evidence PW1 and from Exts.A12 and A14, it is revealed that the petitioner was conducting a stationary shop in which there was also telephone facility, it could be presumed that he had moderate business in 'Vijaya Stores, Kulakkada' and as such the notional income of the petitioner is fixed as Rs.15,000/-.

13. In the accident the petitioner sustained the following injuries:

(1) lacerated wound 4 X 3 X 1 c.m. over medial thigh, 15 c.m. above the knee (2) deformity on right thigh, fracture of femur (3) swelling on left hand dorsum (4) lacerated wound 1 X 1 X 1 c.m. over left hand 5 c.m. from wrist (5) abrasion 5 X 4 c.m. over left forearm extending from wrist (6) abrasion 3 X 2 c.m. over right leg 10 c.m. above ankle. Investigation revealed (1) intertrochanteric fracture right femur (2) Type-III-C compound fracture right distal femur (3) right femoral artery injury (4) acute kidney



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injury (5)sepsis (6)systemic hypertension (7) Type-II diabetes mellitus.

14. His right leg above knee was amputated. As per Exhibit A10 disability certificate the petitioner suffered 80% permanent physical disability. It was issued by the medical board. The Tribunal, has accepted the permanent physical disability of the petitioner as such and hence, I do not find any grounds to disbelieve the same. Therefore, the permanent physical disability of the petitioner is accepted as 80%, as fixed by the Tribunal.

15. On the date of accident, the petitioner was aged 64 years. Therefore, no part of the monthly income can be added towards future prospects, as held in the decision in **National Insurance Co. Ltd v. Pranay Sethi** [(2017) 16 SCC 680] and the multiplier to be applied is 7, as held in **Sarla Verma v. Delhi Transport Corporation**, [(2009) 6 SCC 121]. In the above circumstances, the loss of disability/loss of earning capacity will come to Rs.10,08,000/-.

16. Towards loss of earning, the tribunal has awarded Rs.50000/- being the income for 5 months @Rs.10000/-. Since the notional income of the petitioner is re-fixed at Rs.15000, towards loss of earning he is entitled to get



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a sum of Rs.75000/-(15000x5months)

17. The main argument advanced by the learned counsel for the 3rd respondent is regarding to the compensation awarded by the tribunal on the head of pain and suffering as well as on the head loss of amenities. It is true that the tribunal has awarded a sum of Rs.3,00,000/- on the head pain and suffering and Rs.5,00,000/- on the head loss amenities and enjoyment of life. In this case the petitioner sustained very serious injuries in the accident and his right leg above knee was amputated. He was treated as inpatient for a total period of 30 days. In the meantime, he had underwent 7 major surgeries. Therefore, it can be seen that because of the injuries sustained in the accident the petitioner has suffered a lot, both mentally and physically. Because of the injuries he could not even continue his stationary shop. As PW1 he deposed that he discontinued his stationary shop because of the injuries sustained in the accident. Therefore, the compensation awarded by the Tribunal on the head pain and suffering and loss of amenities cannot be stated to be excessive. Therefore, I do not find any grounds to interfere with the same.

18. The learned counsel for the petitioner submitted that the



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Tribunal has awarded only Rs.4,00,000/- towards future medical treatment including the cost of prosthesis, which according to him, is on the lower side. The petitioner produced Ext.A11 invoice showing the price of a prosthesis as Rs.1,86,000/-. He would argue that the maximum life of a prosthesis is five years and huge amount is also required for it's periodical maintenance. The learned counsel for the 3rd respondent contend that Ext.A11 is only a invoice and not a bill and as such it cannot be relied upon.

19. The learned counsel has handed over the photograph of the petitioner to convince the Court his present condition. In the said photograph, it is seen that the petitioner was using a prosthesis, even now. It is true that Ext.A11 is only a invoice and not a bill. In the decision in **Vivek G. vs. National Insurance Company Ltd. 2023 KHC 2941**, in the case of a 12 year old child whose right leg was amputated because of the injuries sustained in an accident that occurred in the year 2011, the Hon'ble Supreme Court has awarded a sum of Rs.20,00,000/- being the cost of four prosthesis and a further sum of Rs.6,00,000/- towards the cost of maintenance of the prosthesis.

20. In the instant case the petitioner is aged 64 and he has claimed



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only Rs.1,86,000/- being the cost of one prosthesis. Even in the decision in **Vivek** (supra), the apex court accepted the argument that the age of a prosthesis is only five years and it requires huge amount towards periodical maintenance. Since the petitioner is still alive, even after 11 years of the accident, he is entitled to get the value of at least three prosthesis. Therefore Rs.1,86,000/- claimed towards the cost of one prosthesis is not at all on the higher side. Even at the rate of Rs.1,86,000/- the value of three prosthesis will come to Rs.5,58,000/-. In addition to the same, he is entitled to get reasonable compensation towards the cost of maintenance of the prosthesis. Therefore, considering the facts I hold that. towards further medical treatment the petitioner is entitled to get a sum of Rs.6,00,000/-.

21. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

22. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.35,60,900/-, as modified and recalculated above and given in the table below, for easy reference:



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Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
1	Loss of earning	50000	75000
2	Transport to hospital	25400	25400
3	Extra nourishment	10000	10000
4	Damage to clothing	5000	5000
5	Medical expenses	1022500	1022500
6	Bystander expenses	15000	15000
7	Pain and suffering	300000	300000
8	Compensation for loss of earning capacity/loss of disability	672000	10,08,000
9	Loss of amenities & enjoyment of life	500000	500000
10	Future medical treatment including cost of prosthesis	400000	600000
	Total	29,99,900 rounded to 30,00,000	3560900
	Enhanced	560900	

20. In the result, this Appeal is disposed off, and Respondent No.3 is directed to deposit a total sum of Rs.35,60,900/- (Rupees Thirty Five Lakhs Sixty Thousand Nine Hundred only), less the amount already deposited, if any, along with interest at the rate ordered by the Tribunal, from the date of the petition till deposit/realisation, excluding interest for a period of 1746 days, the period of delay in filing the appeal, with proportionate costs, within a period of two months from today. (Enhanced compensation will carry



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interest @8%)

On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioner, excluding court fee payable, if any, without delay, as per rules.

Sd/-
C. PRATHEEP KUMAR,
JUDGE

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