IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 18th DAY OF NOVEMBER 2024/ 27TH DAY OF KARTHIKA, 1946

MACA NO. 223 OF 2021

AGAINST THE AWARD DATED 07.07.2020 IN O.P.(M.V.) NO.588 OF 2017 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

APPELLANT/PETITIONER :

MASTER JYOTHIS RAJ KRISHNA @ JYOTHI KRISHNA
AGED 8 YEARS
S/O. RAJESH KUMAR, (MINOR), KARICKAL HOUSE, IRAPURAM KARA, IRAPURAM VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT, REPRESENTED BY HIS NEXT FRIEND AND FATHER SRI. RAJESH KUMAR, S/O. KRISHNANKUTTY, AGED 44 YEARS, KARICKAL HOUSE, IRAPURAM KARA, IRAPURAM VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DISTRICT

BY ADVS.
ENOCH DAVID SIMON JOEL
SRI.S.SREEDEV
SRI.RONY JOSE

RESPONDENTS/RESPONDENTS:

1 SUNNY GEORGE
AGED 47 YEARS
S/O.GEORGE, EDATHEL HOUSE, MANJAMMAKKITHADAM BHAGAM, PANDAPPILLY, ARAKKUZHA VILLAGE, MUVATTUPUZHA TALUK, FROM EDAPPAZHATHIL HOUSE, PUNNEKKADU, KEERAMPARA VILLAGE, ERNAKULAM DISTRICT, PIN-686661 (R.C.OWNER OF BUS BEARING NO.KL-57-E-8659).

2 HDFC ERGO GENERAL INSURANCE CO. LTD.,
1ST FLOOR, 165-166, BACKBAY RECLAMATION, H.T.PAREKH

MARG, CHURCHGATE MUMBAI,
MAHARASHTRA, PIN-400020.

SRI.GEORGE A CHERIAN, SC
SMT. LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.10.2024, ALONG WITH MACA NO.483/2021, THE COURT ON 18-11-2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 18th DAY OF NOVEMBER 2024/ 27TH DAY OF KARTHIKA, 1946

MACA NO. 483 OF 2021

AGAINST THE AWARD DATED IN O.P.(M.V.) NO.588 OF 2017 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

APPELLANT/PETITIONER :

HDFC ERGO GENERAL INSURANCE COMPANY LIMITED
1ST FLOOR, 165-166, BACKBAY RECLAMATION,
H. T. PAREKH MARG, CHURCHGATE, MUMBAI,
MAHARASHTRA, PIN - 400 020, NOW REPRESENTED BY ITS MANAGER (LEGAL), REGIONAL OFFICE, RAJAJI ROAD,
ERNAKULAM, KOCHI - 11.

BY ADVS.
GEORGE CHERIAN (SR.)
SMT.K.S.SANTHI
SRI.ALEXY AUGUSTINE
SMT.LATHA SUSAN CHERIAN

RESPONDENT/PETITIONER :

JYOTHIS RAJ KRISHNA @ JYOTHI KRISHNA
AGED 8 YEARS
S/O. RAJESH KUMAR, MINOR, KARICKAL HOUSE,
IRAPURAM KARA, IRAPURAM VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT,
REPRESENTED BY HIS NEXT FRIEND AND FATHER RAJESH KUMAR, S/O. KRISHNANKUTTY, AGED 47 YEARS,

KARICKAL HOUSE, IRAPURAM KARA,
IRAPURAM VILLAGE P. O., KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT,
PIN - 683541.

BY SRI.S SREEDEV

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.10.2024, ALONG WITH MACA NO.223/2021, THE COURT ON 18-11-2024 DELIVERED THE FOLLOWING:

"C.R"

EASWARAN S., J

.....

MACA Nos.223/2021 & 483/2021

.....

Dated this the 18th day of November , 2024

JUDGMENT

The vexed question has come up again before this Court. What should be the notional income of a minor, aged 5 years, in a Motor Accident Claim? The accident took place in the year 2016 and for 8 years, the child has been in a paraparesis state. No amount of compensation can give back the child his childhood. Still the insurance company contends that the compensation awarded is highly disproportionate to the claim. On behalf of the minor, the father is aggrieved by the insufficiency of the compensation awarded.

2. The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury. The statement of general rule from which one must always start in resolving a problem as to the measure of damages. A rule equally applicable to tort and contract has its origin in

the speech of Lord Blackburn in **Livingstone Vs Rawyards Coal Co (1880)5 App Cases 25**. He there defined the measure of damages as "**that sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting compensation or reparation**" This statement has been consistently referred to or cited as approval or restated in similar language. Keeping in mind the above principles, this Court proceeds towards consideration of the issues raised in the appeal.

3. The succinctly stated facts for disposal of the appeal is as follows:

Jyothis Raj Krishna, a 5 year old boy studying in U. K .G who had just started his bubbling life was walking with his family members on 03.12.2016 along the northern side road margin of Muvattupuzha – Ernakulam NH from east to west, met with a devastating accident which was about to change the rest of his life. The offending vehicle, a car bearing Registration No.KL-44-A-3243 driven by the 1st respondent in a rash and negligent manner came and hit the appellant. Though, immediately after the accident, the boy was taken to the Medical College Hospital,

Kolenchery and then referred to Amritha Hospital, he could not get up thereafter. As a result of the accident, he is still lying in a vegetative state. Claiming compensation under various heads, the claimant/appellant, through his father, approached the Motor Accidents Claims Tribunal, Muvattupuzha in O.P.(MV) No.588 of 2017.

4. On behalf of the claimant/appellant Exts.A1 to A9 were produced. The respondents did not produce any evidence. However, the insurance company disputed the claim on various grounds. The claimant was referred to the Medical College Hospital, Kottayam in order to assess the disability. Ext.C1 dated 13.11.2019 is the disability certificate issued from the Government Medical College Hospital, Kottayam. The Medical Board assessed the disability at 77%. Based on the disability, the tribunal proceeded to consider the claim and fixed the notional income of the minor at ₹8,000/- per month and awarded the following compensation:

Sl. No.	Head of claim	Amount Claimed (in Rupees)	Amount Awarded (in Rupees)	Notes
1	Transport to hospital	10,000	10,000	reasonable
2	Damage to clothing	5,00	2,000	reasonable
3	Extra nourishment	50,000	50,000	reasonable

4	Treatment charges	1,00,000	1,03,423	Actual
5	Hospital attendance	20,000	20,000	Reasonable
6	Future treatment charges and Bystander expenses	10,00,000	10,00,000	reasonable
7	Pain and suffering	5,00,000	3,00,000	Reasonable
8	Continuing and permanent disability	40,00,000	11,08,800	reasonable
9	Loss of earning power	40,00,000	10,00,000	reasonable
10	Loss of conveniences and amenities in life	5,00,000	4,00,000	reasonable
11	Compensation towards sufferings of the family	0	5,00,000	reasonable
	Total claim in limited to	1,0185,000 50,00,000	44,94,223	Just compensation

5. The claimant/appellant has come up with this appeal questioning the grant of compensation under various heads.

6. On the other hand , the Insurance Company has approached this Court contending that the notional income fixed by the tribunal is high. The tribunal could not have granted interest on the compensation for future medical treatment. It is further contended that, after allowing the compensation towards loss of earning power, the tribunal has allowed the compensation for disability also, which is impermissible under law. Even the compensation awarded under the head “disability” is on the higher

side.

7. Since the claimant has come up in appeal seeking enhancement, and the said appeal having been preferred at the earlier point of time, this Court will consider the contention raised by the claimant/appellant in order to ascertain as to whether the claimant/appellant is entitled for enhancement. If the findings of this Court is that the claimant/appellant is entitled for enhancement, then automatically the appeal preferred by the insurance company fails. In this backdrop, the respective contentions raised by the parties will be dealt with in detail.

8. Heard Sri.S.Sreedev, the learned counsel appearing for the claimant/appellant in MACA No.223 of 2021 and the learned Senior counsel Sri.George Cherian, assisted by Smt.Latha Susan Cherian the learned Standing Counsel appearing on behalf of the insurance company, the appellant in MACA No.483 of 2021.

9. Sri.S.Sreedev, the learned counsel appearing for the claimant/appellant raised the following submissions :

(1) The notional income fixed by the tribunal at ₹8,000/- cannot be sustained. In support of this contention, the learned counsel relied on the judgment

of the Supreme Court in ***Master Ayush v. The Branch Manager, Reliance General Insurance Co. Ltd and Others [2022 (7) SCC 738].***

(2) The bystander expenses and the attendant charges granted by the tribunal are inadequate. The attendant charge has to be fixed in terms of the judgment of the Hon'ble Supreme Court in ***Kajal v. Jagdish Chand and Others [2020(4) SCC 413].***

(3) Since the Medical Board assessed 77% disability, considering the fact that the claimant is still in a vegetative state, the functional disability of the claimant ought to have been fixed at 100%.

(4) While calculating the attendant charges in terms of the principles laid down by the Hon'ble Supreme Court in ***Kajal (supra)***, the same has to be reckoned by taking into consideration the minimum wages as per the notification issued by the State of Kerala under the provisions of the Minimum Wages Act, 1948.

(5) The compensation granted under the head Pain and

Suffering is insufficient.

(6) The tribunal erred in not granting any compensation towards the future prospects.

(7) In view of the peculiar medical condition of the claimant/appellant, he is also entitled for allowances towards special diet.

(8) The tribunal ought to have applied the multiplier of 18 instead of 15.

(9) It is contended that the interest awarded by the tribunal is not sufficient.

10. In opposition to the aforesaid arguments, Sri.George Cherian, the Learned Senior counsel appearing for the insurance company, raised the following submissions :

(1) The tribunal could not have granted the compensation under the head loss of earning as well as towards permanent disability together. In support of his contention, the learned Senior counsel relied on the judgment of the Full Bench of this Court in ***Oriental***

Insurance Company Limited v. V.Hariprasad and Others [2005 (4) KLT 977].

(2) The claim of fixing attendant charges in terms of the principles laid down by the Hon'ble Supreme Court in *Kajal (supra)*, though can be followed by this Court, however, the amount to be fixed as attendant charges cannot relate to the wages fixed for a skilled labourer under the Provisions of the Minimum Wages Act, 1948.

(3) The learned Senior counsel would also place reliance on the judgment of the Honourable Supreme Court in ***Divya v. National Insurance Company Limited & Another [2022 (6) KLT SN 23]***, wherein it was held that in cases where the age of the victim happens up to 15 years, the multiplier of '15' has to be adopted.

(4) While calculating the attendant charges, according to the learned Senior counsel, the principles laid down by the Supreme Court in ***Chaus Taushif Alimiya v. Memon Mahmmad Umar Anwarbhai [AIR***

2023 SC 1110] have to be followed.

(5) The learned Senior counsel placed reliance on the judgment of the learned Single Bench of this Court in ***United India Insurance Company Limited v. Dilna Dineshan [2022(2) KHC 396]***, wherein the learned Single Judge of this Court had granted a consolidated amount as enhanced compensation.

11. Having considered the rival submissions raised across the Bar, this Court is called upon to decide on multiple issues. Therefore, it will be appropriate for this Court to frame the following questions which the court is required to adjudicate.

(a) Whether the notional income fixed by the tribunal at ₹8,000/-is correct.

(b) What should be the attendant charges to be granted to the claimant/appellant?

(c) Whether the claimant/appellant is entitled for future prospects.

(d) Whether the tribunal could have granted the compensation under the head loss of earnings and disability.

(e) Whether interest could be granted towards the future treatment.

(f) Whether the claimant/appellant is entitled to any enhancement under the non-conventional heads.

12. The most disputed and still unsettled question is what should be the notional income of a minor aged 5 years. Before answering this question, this Court is reminded of the difficulty it faces. There is no direct precedent on this point. Court cannot look deep into the Statute for aid since the Statute is also silent. The solitary guide before this Court is the salutary principle enshrined under Section 166 of the Motor Vehicles Act 1988 wherein the courts and tribunals are bound to grant a just and fair compensation. However, in order to arrive at a just and fair compensation, certainly there should be a notional income. Although there are multiple precedents on the approximate compensation or abstract notional income that can be fixed in respect of a minor child between the ages of 5 to 15 years in a case of a death, unfortunately the same is of no avail while deciding the issue at hand. No amount of compensation can bring back the lost childhood of the claimant. However, the grant of just and fair compensation can bring immense solace to the family of the claimant. With these compelling facts, this Court now proceeds to answer the questions posed before it.

13. **Notional Income**- As stated above, the most debated issue under the Motor Vehicles Act, 1988 yet remains unsettled is the notional income of a minor child. There is a school of thought that notional income can be fixed referring to the principles laid down by the Hon'ble Supreme Court in **Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company [AIR 2011 SC 2951].** But this Court is called upon to decide a peculiar issue which would bring consistency in the matter of awarding compensation by various tribunals.

13.1 The component of notional income becomes predominant since it forms a crucial part in awarding just and fair compensation. Probably this exercise by the Court may perhaps obliterate the disparity in the matter of awarding compensation which is in existence now. In this case, the tribunal fixed the notional income at Rs.8,000/-. However, no reasons whatsoever have been assigned by the Tribunal in fixing the notional income at Rs.8,000/-. Thus, it is clear that the tribunal did some guesswork while deciding the notional income of the claimant. According to the learned counsel for the claimant, Sri.S.Sreedev, the tribunal ought to have fixed the notional income by following the decision of the Hon'ble Supreme Court in ***Master Ayush v. The Branch Manager, Reliance***

General Insurance Co. Ltd and Others [2022 (7) SCC 738]. A detailed discussion on the decision rendered by the Hon'ble Supreme Court is required in order to arrive at the justiciable conclusion as regards to the 1st question posed.

14. In ***Master Ayush (supra)*** the Hon'ble Supreme Court dealt with a claim preferred by a 5 year old victim of a road accident which occurred on 21.09.2010. The tribunal awarded a total compensation of ₹18,24,000/- to Master Ayush. However, on appeal by the insurance company, the High Court, by judgment dated 07.09.2020, reduced the claim to ₹13,46,805/-. The certificate of disability in respect of Master Ayush revealed that he was 100% disabled. While considering the question "what should be the notional income of a minor child having 100% disability?', the Hon'ble Supreme Court relied on the scheduled minimum wages issued by the State of Karnataka for employments not covered under any of the scheduled employments as per notification dated 19.02.2007. The notional income was fixed by taking the minimum wage of a skilled employee and adding 40% future prospects in terms of the judgment of the Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi*** **[2017 (16) SCC 680]**. Thus, an amount of

₹5,180/- per month was fixed as the notional income. By adding the multiplier as '18', the compensation towards future earnings was worked out. Naturally, a doubt will arise whether it is permissible to deviate from the principles carved out in Ramachandrappa (supra). A profound reading of the above decision rendered by the Hon'ble Supreme Court in Master Ayush (supra) shows that time has come where the courts are required to undertake a progressive thinking in the matter of fixation of notional income of a minor child and not to confine itself with a restrictive mind.

15. Applying the principles laid down by the Supreme Court, this Court now proceeds to assess the notional income. As far as the State of Kerala is concerned, the Government has brought the minimum rates at which the wages are to be paid. In **G.O.(P).No.56/2017/Fin dated 28.04.2017,** the Government of Kerala had revised the minimum wages for skilled workers w.e.f 01.04.2016 and the same is fixed at ₹17,325/- per month. Therefore, this Court is of the considered view that the notional income of the claimant can be fixed as ₹17,325/-. By formulating the above proposition, this Court would hope that the same would bring succor to the claimants in cases where fixation of notional income of the minor child is involved. Moreover, this Court feels that time has come where it has

become expedient to move forward from the principles laid down by this Court in **National Insurance Company and others Vs K.K.Assainar [2019 (4) KLT 39]** since it is felt that the said decision does not fully address the issue which has cropped up in this appeal. Moreover, in order to achieve the true purport of beneficial legislation a deeper analysis is required. This Court is conscious of the fact that by referring to the provisions of the Minimum Wages Act 1948, for the purpose the notional income of a minor child, this Court has never ignored the future of a blooming young mind nor has closed its eyes over the bright future of the child and the prospects which he may have secured but for this fatal accident. The above exercise is purely intended to serve as a guidance for the purpose of calculation of the notional income without which the claimants would be left foundered.

16. Now having ascertained the notional income as above, the entitlement of the claimant/appellant for compensation under various heads can be considered as follows :-

16.1 **Bystander expenses/attendant charges** :- The tribunal awarded compensation under the heads 'future treatment charges and bystander expenses' under one single head. This is impermissible under

law. The entitlement for future treatment will be dealt later in the judgment.

16.2 In order to calculate the bystander expenses, the tribunal adopted the principle of reasonable assessment. Is this method justiciable? Without any doubt in its mind this Court is firm in its view that the same is not in view of the judgment of the Hon'ble Supreme Court in ***Kajal (supra).*** The Hon'ble Apex Court held that while calculating the attendant charges/bystander expenses in a claim arising under Section 166 of the Motor Vehicles Act, 1988, multiplier system has to be applied. Paragraph 22 of the judgment of the Hon'ble Supreme Court in ***Kajal (supra)*** is extracted hereunder :-

> **22. The attendant charges**
>
> The attendant charge has been awarded by the High Court @ Rs.2,500/ per month for 44 years, which works out to Rs.13,20,000/. Unfortunately, this system is not a proper system. Multiplier system is used to balance out various factors. When compensation is awarded in lump sum, various factors are taken into consideration. When compensation is paid in lump sum, this Court has always followed the multiplier system. The multiplier

> system should be followed not only for determining the compensation on account of loss of income but also for determining the attendant charges etc. This system was recognised by this Court in Gobald Motor Service Ltd. v. R.M.K Veluswami, AIR 1962 SC 1. The multiplier system factors in the inflation rate, the rate of interest payable on the lump sum award, the longevity of the claimant, and also other issues such as the uncertainties of life. Out of all the various alternative methods, the multiplier method has been recognised as the most realistic and reasonable method. It ensures better justice between the parties and thus results in award of 'just compensation' within the meaning of the Act.

16.3 Therefore having found that the multiplier system has to be adopted for the purpose of calculating the attendant charges, this Court proceeds to consider the respective contentions of the parties as to whether the attendant charges has to be fixed in terms of the notional income or on a consolidated amount or as fixed by the Hon'ble Supreme Court in ***Chaus Taushif Alimiya v. Memon Mahmmad Umar Anwarbhai [AIR 2023 SC 1110].*** The adjudication on this point is required because, despite the paraparesis state of the claimant/appellant,

the learned Senior Counsel for the Insurance Company raised serious objections to the claim of the claimant. According to the learned Senior counsel Sri.George Cherian, though the Hon'ble Supreme Court had laid down the principle of applying the multiplier system for calculating the attendant charges, later in ***Chaus Taushif Alimiya (supra)***, the consolidated amount was taken for the purpose of calculating the attendant charges. The same principle was followed by this Court in ***United India Insurance Company Limited v. Dilna Dineshan [2022(2) KHC 396]***. In short, the pointed submission of the learned Senior counsel is that even if this Court proceeds to fix the attendant charges by applying the multiplier system, only an amount of ₹5,000/- can be granted for one attendant.

16.4 *Prima facie,* this Court finds that the argument of the learned Senior counsel and the stand taken by the insurance company is not only fallacious but also inconsiderate in the light of the factual state of the claimant. The vehemence under which the insurance company opposes the plea is as though this Court is dealing with an appeal for enhancement against a minor injury. Such an inconsiderate mind of a corporate entity cannot be appreciated by this Court. The Insurance company certainly has

a corporate social responsibility which should deter them from raising these untenable contentions. However, before going towards an in-depth analysis of the arguments raised by the learned Senior Counsel as regards the fixation of the attendant charges as ₹5,000/-, this Court needs to decide whether there is any absolute proposition of law laid down by the Hon'ble Supreme Court in ***Chaus Taushif Alimiya (supra)*** so as to pegg the attendant charges at Rs 5000/- per month.

16.5 It is true that in ***Chaus Taushif Alimiya (supra),*** the Hon'ble Supreme Court followed the principles laid down in *Kajal (supra)* and granted ₹10,000/- per month as attendant charges by applying the multiplier system. However, does the decision of the Hon'ble Supreme Court in ***Chaus Taushif Alimiya (supra)*** laid down an absolute proposition of law requiring this Court to necessarily follow the same so as to fix the attendant charges at ₹5,000/- per month. It must be remembered that the Supreme Court determined the attendant charges in ***Kajal*** *(supra)* by placing reliance on the notification issued under the provisions of the Minimum Wages Act, 1948. On a close reading of the decision of the Hon'ble Supreme Court in ***Chaus Taushif Alimiya*** *(supra)* and *in* ***Divya*** *(supra)*, it is clear that the decision was rendered on

particular facts of that case. Moreover, while considering the question of award of damages, no absolute rule can be laid down so as to restrict the right of the claimant to receive the compensation. If the argument of the learned Senior Counsel for the Insurance Company is accepted, the court will be ignoring the basic principles governing the award of damages in tortious liabilities. Still further, this Court cannot remain oblivious of the fact that the date of accident in **Kajal** (Supra) was in the year 2007 . However, in the present case, the accident occurred in the year 2016 and considering the depreciation of the value of rupee and considering the overall rise of inflation, the insurance company cannot still maintain that Rs.5,000/- alone can be granted. Ultimately, the endeavor is to grant just and fair compensation. Hence this Court is of the view that while fixing attendant charges there is no absolute rule that only Rs.5,000/- alone can be granted. The Court cannot shut its eyes to the realities of life and simply believe that for attending a child in paraparesis state, services of an attendant will be readily available for Rs 5,000/-.

16.6 However having said so, the court needs to thread carefully while granting the attendant charges. The appellant claims that the attendant charges have to be calculated in terms of the notional income so

fixed by this Court applying the provisions under the Minimum Wages Act, 1948. It is true that while fixing the attendant charges, the Hon'ble Supreme Court in ***Kajal*** *(supra)* had adopted the notification issued under the provisions of the Minimum Wages Act, 1948. However, though this Court has found that there is no absolute Rule that while considering the claim under the attendant charges only an amount of Rs.5,000/- can be fixed, the argument of the learned counsel for the appellant that minimum wage prescribed has to be applied cannot sustain. It is pertinent to mention that the minimum wages fixed by the State of Kerala is always the highest in the country. Though it may be possible to hold that for fixing the notional income, reliance can be placed on the notification issued under the provisions of Minimum Wages Act 1948, fixing the attendant charges based on the notification may lead to an anomalous situation where the compensation to be awarded is likely to go out of proportion. Since there are no guiding principles laid down either under the Statute or under any precedents, this Court is of the considered view that the income to be adopted for calculating attendant charges has to be just and fair considering the salutary principles enshrined under Section 166 of the Motor Vehicles Act, 1988. With the above principles in backdrop, this

Court proceeds to consider the claim for fixing of the attendant charges.

16.7 In the present case, the notification issued by the Government of Kerala under the provisions of Minimum Wages Act, 1948 fixes the maximum income at ₹17,325/-. This Court has also found that the notional income of the claimant has to be fixed at ₹17,325/-. In the peculiar facts and circumstances of this case, this Court is of the considered view that an amount of ₹10,500/- can be taken as the monthly income for calculating the attendant charges for the child who was getting ready for blossoming into life and is forced to confine to the bed probably for the rest of his life. This Court feels it appropriate to grant the attendant charges for two persons, since, it has been come out in evidence that the claimant/appellant requires the assistance of two attendants.

17. **Permanent Disability** :- Coming to the next question as to whether the claimant is entitled to have the functional disability at 100%, the learned counsel for the appellant Sri.S.Sreedev pointed out that despite the percentage of disability fixed by the Medical Board, the tribunal can always appropriately modified the percentage of disability depending upon of the facts of each case.

17.1 In ***Rekha Jain & another v. National Insurance***

Company Ltd. [2013 (8) SCC 389], the Hon'ble Supreme Court considered the question of fixing the functional disability based on the permanent disability suffered in a motor accident and held that the question of fixing the functional disability based on the permanent disability would depend upon the facts of each case and also the avocation followed by the claimant.

17.2 In ***Sarnam Singh v. Shriram General Insurance Company Ltd.*** **[2023 KHC 6687]**, the Hon'ble Supreme Court again considered this issue. While answering the question in affirmative, the Hon'ble Supreme Court held that "any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by a person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be the end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect."

17.3 Keeping in mind, the principles laid down by the Hon'ble Supreme Court in ***Rekha Jain (supra)*** and ***Sarnam Singh (supra)***, when this Court proceeds to analyse the present state of affairs of the

claimant/appellant, it cannot shut its eyes on the ground reality that a 5 year old UKG student who had lost his blossoms of childhood was confined to the bed even today, resulting in his inability to do his all personal needs without having the assistance of two attendants. When the present state of affairs of the claimant/appellant comes to the mind of this Court, this Court has no hesitation, even for a moment, to hold that the claimant/appellant has to be assessed with a functional disability of 100%. Therefore, despite the assessment of 77% disability under Ext.C1 as has been taken by the tribunal, this Court is of the considered view that the claimant/appellant has to be assessed with 100% functional disability and to that extent, the award of the tribunal is modified.

17.4. Once the functional disability is assessed at 100% then what should be the quantum of compensation to be awarded. Hitherto there were no guidelines regarding the grant of compensation for permanent disability. In **Master Mallikarjun Vs Divisional Manager, The National Insurance Co [(2014) 13 SCC 396],** the Apex Court laid down certain guiding principles in the matter of the grant of compensation in case of permanent disability of a minor child. However, Hon'ble Supreme Court felt that the principles laid down in the above Judgment

did lead to certain inconsistency in the matter of awarding of compensation. Hence it was felt that adoption of the multiplier system would efface the inconsistency to some extent and thus a different approach in **Kajal (supra)** was taken. Thus the tribunal rightly adopted the multiplier system while calculating the compensation under permanent disability.

18. **Future prospects** :- The Tribunal even after noticing the peculiar facts of this case did not deem it appropriate to grant future prospects. The entitlement for future prospects is governed by the decision of the Supreme Court in ***Pranay Sethi (supra)***. Therefore, this Court deem it appropriate not to elaborate the proposition any further and is of the considered view that the claimant/appellant is entitled for the future prospects. The future prospects is fixed @ 40% on ₹17,325/- which is the notional income fixed. Thus an amount of Rs 24,255/- is fixed as the multiplicand. In cases of permanent disability also the claimant can seek amounts for future prospects going by the decision of the Hon'ble Supreme Court in ***Sidram vs. Divisional Manager, United India Insurance Company limited [2022 SCC Online 1597].***

19. The next question to be considered by this Court is whether the

loss of earning power and compensation towards permanent disability will go together. The learned Senior counsel for the insurance company placed reliance on the decision of the Full Bench of this Court in ***Oriental Insurance Company Limited v. V. Hariprasad and Others [2005 (4) KLT 977 (F.B)]*** wherein the Full Bench had occasion to consider this question. It was held that if compensation is granted under the head permanent disability, then the claimant is not entitled for compensation under the head loss of earning power. Paragraph 29 of the decision reads as under :-

> 29. **Resultantly, we find that (1) Loss of earning power is one of the consequences that follows from a permanent disability; (2) Permanent disability is a physical impairment which results in distinct personal, social and financial consequences to be classified as one head requiring compensation to be worked out as one entitling for non-pecuniary damages; (3) An injured, who sustained a disability is entitled to claim compensation under the head permanent disability. If the resultant deprivation is categorized and claim is made under separate heads and compensation is awarded under the above heads, over and above the same, for the deprivation suffered compensation is not to be granted under the general head permanent disability; (4) all the eventualities that may surface on account of a disability, which deserve to be compensated may not be possible to be**

> **cataloged and essentially the tribunal has to determine the claim bearing in mind the statutory mandate that what is payable is a just compensation; and (5) while awarding compensation under the head permanent disability, the Tribunal should take notice of the loss of earning power, in each individual case, in case a claim is made as one of the contributory to the total packet of compensation and shall not take into consideration the loss of earning power as a separate head after fixation of compensat**ion **for permanent disability)**

19.1 However can it be said that the decision of the Full Bench of this Court in **V. Hariprasad (supra)** holds good even today. It is true that momentarily this Court was carried away with the submissions of the learned Senior counsel based on the decision of the Full Bench. However, on a close exploration of the precedents, this Court finds that contrary view has been expounded by the Hon'ble Supreme Court. In **B. Kothandapani Vs Tamil Nadu Road Transport Corporation Limited [(2011) 6 SCC 420]** the Hon'ble Supreme Court held that there is no bar for claiming compensation under the head loss of earning as well as for permanent disability.

19.2 It cannot be ignored that the permanent disability leads

to the loss of enjoyment of the amenities and comfort in life. Though the person suffering from permanent disability is entitled to claim compensation, in a given case where the nature of permanent disability is in such a proportion that may incapacitate the person from earning in his life, the Court cannot turn a blind eye towards the debilitating physical condition of the child. It is true that the compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability. At the same time, it cannot be construed that compensation cannot be granted for permanent disability of any nature. To cite an example, in the case of a non-earning member of a family who is injured in the accident resulting in permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. Apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal activities they need to depend on others.

19.3. In **S.Manickam Vs Metropolitan Transport**

Corporation Limited [(2013) 12 SCC 603], the Apex Court held that the claim under the head loss of earning power and permanent disability is perfectly sustainable. Para 14 of the Judgment is extracted as under.

> **Para 14.- In matters of determination of compensation, particularly, under the Motor Vehicles Act, both the tribunals and the High Courts are statutorily charged with a responsibility of fixing a "just compensation". It is true that determination of "just compensation" cannot be equated to a bonanza. On the other hand, the concept of "just compensation" suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the Courts. We hold that the determination of quantum in motor accidents cases and compensation under the Workmen's Compensation Act, 1923 must be liberal since the law values life and limb in free country in generous scales. The adjudicating authority, while determining the quantum of compensation, has to take note of the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. While computing compensation, the approach of the tribunal or a Court has to be broad based and sometimes it would involve some guesswork as there cannot be any precise formula to determine the quantum of compensation.**

19.4 A Division Bench of this Court in ***Minor Basid VS K.C.Sanu***

and Another [2018 (2) KHC 671] had deeply analyzed the precedents on the point and came to the conclusion that the compensation for loss of earning as well as for permanent disability is maintainable. Para 33 of the Judgments reads as under:

> **33. From the touch stone of the ratio in the above judgments, we have examined the heads under which compensation was awarded by the learned Tribunal, which award is impugned herein by the Insurance Company in M.A.C.A.No.2514 of 2016. As is available from the afore extracted table, the learned Tribunal has awarded Rs.2,50,000/- under the head 'loss of studies', Rs.3,00,000/- for 'loss of earning power' and Rs.2,50,000/- for 'loss of amenities of life'. In addition to this, an amount of Rs.3,00,000/- has been awarded, even without it being sought for in the claim petition, under the head 'shortened expectation of life'. These amounts were awarded by the learned Tribunal noticing the rather peculiar and singular condition of the victim, who was in a completely vegetative state even at that time and who unfortunately continues to be so even today. Even though an amount of Rs.6,00,000/- was awarded for 'continued physical disability', which disability now appears to be incapable of being ever remedied, going by the ratio of the various judgments above, the victim cannot be denied compensation for loss of amenities of life or for loss of earning power, since these are two different concepts, once relating to the disability and its agony while the other relates to loss of amenities and the attributes of a meaningful and happy life, which have now been lost forever to the victim. In that perspective, even loss of studies is not merely a limb to be attached to the condition of permanent disability but one that has robbed the child**

> **of a worthy life, which he would have otherwise had, but for the accident. Similarly, the compensation awarded for shortened expectation of life also cannot be faulted since there is no guarantee now for the life expectancy of the child and it is nothing but a miracle that he has survived in spite of his extremely debilitating physical conditio**n.

19. 5 The decision of this Court as afore was assailed before the Hon'ble Supreme Court at the instance of the Insurance Company in Civil Appeal No 6751 and 6752 of 2018. The Apex Court by Judgment dated 17-7-2018 granted leave and dismissed the appeal. That be so, the decision of the Division bench certainly holds the field. It must be remembered that the true purport of the Motor Vehicles Act, 1988 is indeed beneficial, and time has come for the courts to move away from the archaic principles giving restrictive interpretation to the provisions of the Act. This exactly is what this Court could gather from a close reading of precedents rendered by the Hon'ble Supreme Court on the precise question as posed in the appeal. Therefore this Court expresses its inability to accept the argument of the learned Senior Counsel for the Insurance company. Thus the challenge to the award on that ground has to be turned down.

20. **Pain and suffering :-** A perusal of the award impugned in the appeal shows the tribunal had granted a compensation of ₹3,00,000/-

towards pain and sufferings as against a claim of ₹5,00,000/-. The learned counsel for the claimant Sri.S.Sreedev relied on the judgment of the Hon'ble Supreme Court in ***Kajal*** *(supra)*, and contended that an amount of ₹15,00,000/- has to be granted towards pain and suffering. Though this Court has no hesitation to hold that the claimant can be awarded with a compensation of ₹15,00,000/- under the head pain and suffering in a case of 100% disability following the decision of the Hon'ble Supreme Court in ***Kajal*** *(supra)*, an incidental question may have to be addressed by this Court. According to Sri. George Cherian, the learned Senior counsel appearing for the insurance company, going by the averments in the claim petition, the claimant has only claimed an amount of ₹5,00,000/ and therefore, the claimant/appellant is not entitled for a compensation of ₹15,00,000/- towards pain and suffering. This Court is afraid that the contention of the learned Senior counsel cannot be countenanced. In ***Oriental Insurance Company Limited v. Martin Xavier [2024 KLT online 2579],*** this Court **{ES.J}** has already held that merely because the claimants in their application had claimed a lesser amount will not preclude the courts or the tribunal from granting a higher compensation in terms of the provisions contained under Section 166 of

the Motor Vehicles Act, 1988. Moreover, while deciding a claim petition, the Courts or tribunal is not deciding an adversarial litigation. Strict law of pleadings cannot be applied while dealing with a claim petition under Section 166 of the Motor Vehicles Act 1988. Hence, this Court is of the view that the appellant is entitled for compensation under the head pain and suffering as ₹15,00,000/- going by the principle laid by the Hon'ble Supreme Court in ***Kajal*** *(supra).*

21. **Non conventional heads (marriage prospects, dietary allowances) :-** The next claim raised by the claimant is for compensation towards dietary expenses, marriage prospects etc. It is pertinent to mention that in the claim petition, no such claim was made before the tribunal. A perusal of the application filed before the tribunal shows that a consolidated amount under the head compensation for loss of amenities and convenience in the life was claimed by the claimant/appellant. As against the claim of ₹5,00,000/-, the tribunal had already granted an amount of ₹4,00,000/- as compensation. It may be true that the child has to be put through a special diet because of the paraparesis state of the body. But however, it will be difficult for this Court to assess in exact terms what should be the compensation towards

the dietary expenses. Faced with this situation, this Court is of the considered opinion that a reasonable enhancement under the head loss of amenities can be granted considering the fact that the parents of the claimant will be necessarily attending the child for life with a hope that he will be able to walk in his life at some point in time. Considering these aspects, this Court is of the considered opinion that a further amount of ₹3,50,000/- can be granted in addition to the amount granted by the tribunal.

21.1 Still further, Sri.S.Sreedev, the learned Counsel for the appellant relied on the Judgment of the High Court of Delhi in ***Jyoti Singh v. Nand Kishore and Others and ICICI Lombard General Insurance Company Ltd. v Jyoti Singh and Others [2024 ACJ 161]*** and urged that the dietary expenses have to be granted at the rate of Rs.36,200/- per month adopting the multiplier system. However, this Court cannot subscribe to the argument of the learned counsel for the simple reason that no evidence was adduced before the tribunal with regard to the requirement of ₹36,200/- as special diet. In the facts of that case decided by the High Court of Delhi, there was clear evidence in the form of a prescription of the special diet for the child. However it is beyond

doubt that the child in a paraparesis state will definitely require a special diet. Considering the peculiar circumstances, this court is inclined to award Rs.3,00,000 towards dietary expenses.

21.2 As far as marriage prospects are concerned, it is to be noted that the Hon'ble Supreme Court in *Kajal (supra)* had granted an amount of ₹3,00,000/-towards the marriage prospects. Applying the same, this Court is of the considered view that the said amount could be fixed as a loss of marriage prospects.

21.3. In the earlier part of the judgment, this Court had found that the tribunal had joined the claim under future treatment as well as under the head bystander expenses. This requires separation. Once it is separated, no compensation under the head future treatment will remain unawarded. This anomaly has to be rectified. The entitlement for future treatment is beyond dispute. But unfortunately, no evidence is available for this Court to assess the same. Therefore this Court is required to undertake a speculative exercise in order to achieve the object of just and fair compensation. Considering the totality of the facts and circumstances this court is of the view that an amount of Rs. 3,00,000/- can be granted towards the future treatment.

22. **Multiplier to be adopted.**-. Sri. S. Sreedev, the learned Counsel for the appellant submitted that tribunal went wrong in applying the multiplier of 15 instead of 18. Reliance is placed on the decision of the learned Single Bench in ***Aneesha Mol H & Another v. Najeem @ Nejumon & Another [2023 (6) KLT 122]*** **and** ***Dilna Dineshan(supra)***. However, per contra, the learned Senior Counsel for the Insurance company submitted that going by the principles laid down by the Supreme Court in ***Divya (supra)*** the multiplier has been rightly fixed.

22.1. On a careful consideration of the various precedents, it becomes obvious that there is apparent conflict between multiple decisions of the Apex Court as well as by this Court. Should this conflict be resolved only through a reference to the Larger Bench or this Court should decide the issue in order to give quietus to the dispute.

22.2 Before arriving at a final conclusion, it is necessary to cite a few precedents on this issue which is the root cause for the inconsistency now projected.

i) In **Sarala Varma Vs Delhi Transport Corporation [2009**

KHC 4634], the Hon'ble Supreme Court found that the 2nd Schedule to the Motor Vehicles Act 1988 has certain inconsistency. The said inconsistency was resolved in paragraph 30 of the Judgment which reads as under:

> Para 30. **Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas (set out in column 2 of the table above); some follow the multiplier with reference to Trilok Chandra, (set out in column 3 of the table above); some follow the multiplier with reference to Charlie (Set out in column (4) of the Table above); many follow the multiplier given in second column of the Table in the Second Schedule of MV Act (extracted in column 5 of the table above); and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation (set out in column 6 of the table above). For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas, 14 as per Trilok Chandra, 15 as per Charlie, or 16 as per the multiplier given in column (2) of the Second schedule to the MV Act or 15 as per the multiplier actually adopted in the second Schedule to MV Act. Some Tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling underS.166 and not under S.163A of MV Act. In cases falling under S.166 of the MV Act, Davies method is applicable**.

ii) In **Reshma Kumari and Others Vs Madan Mohan and**

Another [(2013)9SCC 65] the Apex Court was called upon to decide what should be multiplier for persons below 15. In concluding paragraph it was held as under :

> **In what we have discussed above, we sum up our conclusions as follows:**
>
> **(i) In the applications for compensation made under S.166 of the 1988 Act in death cases where the age of the deceased is 15 years and above, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the table prepared in Sarla Verma, 2009 (6) SCC 121, read with para 42 of that judgment.**
>
> **(ii) In cases where the age of the deceased is upto 15 years, irrespective of the S.166 or S.163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma, 2009 (6) SCC 121, should be followed.**
>
> **(iii) As a result of the above, while considering the claim applications made under S.166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.**
>
> **(iv) The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma, 2009 (6) SCC 121 for determination of compensation in cases of death.**
>
> **(v) While making addition to income for future prospects, the Tribunals shall follow paragraph 24 of the Judgment in Sarla Verma, 2009 (6) SCC 121.**

(vi) Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paragraphs 30, 31 and 32 of the judgment in Sarla Verma, 2009 (6) SCC 121, subject to the observations made by us in para 38 above.

(vii) The above propositions mutatis mutandis shall apply to all pending matters where above aspects are under consideration.

iii) However without noticing the above decision, a Three Bench of the Hon'ble Supreme Court in **Rajesh and Others Vs Rajbir Singh and Others [(2013) 9 SCC 54]** held that the multiplier of '18' has to be adopted in case of claimants below the age of 15.

iv) In **National Insurance Company Vs Pranay Sethi [(2017)16 SCC 680]** the Constitution Bench of the Supreme Court overruled the decision in **Rajesh (supra**) and held that **Reshma Kumari (Supra)** was rightly decided.

v) In **Abhimanyu Pratap Singh Vs Namita Sekhon and Another [(2022) 8 SCC 489]** it was held that while deciding **Pranay Sethi** (Supra) and **Sarla Varma** (Supra) the Honourable Supreme Court did not specify what should be the multiplier in cases where the age of the

claimant is below 15 and thus adopted the multiplier of 18. Pertinently, while holding so the the Apex Court followed multiplier adopted in ***Kajal(supra)***

22.3 Having noticed the precedents as above, it becomes obvious that there is a serious conflict in the decisions of the Apex Court as well as the decision rendered by this court in **Dilna Dineshan and Aneesha Mol (Supra).**

22.4. It must be however noticed that the law on this point was settled by the Supreme Court in **Reshma Kumari** (Supra) which was affirmed in **Pranay Sethi** (Supra)**.** However in **Abhimanyu Prathap Singh** (Supra) the Apex Court noticed that the earlier decision did not specify the multiplier to be followed in case of age group below 15 and hence fixed the same at "18'. This incongruous situation was sought to be rectified by the Supreme Court in its decision in **Divya** (Supra). Of course, it may be possible to hold that while deciding **Divya** (Supra) the Apex Court was bound by its earlier decision and hence a different view could not have been expressed and thus leading to the conflict of decisions. It must be noted that when **Reshma Kumari** (Supra) as affirmed by the Constitution Bench in **Pranay Sethi** (Supra) holds the field, any decision

rendered contrary cannot be accepted as binding precedent. Similarly while deciding **Dilna Dineshan** (Supra) **and Annesha Mol** (Supra) the learned Single Bench of this Court did not notice the decision of the Supreme Court in **Reshma Kumari** (Supra) **and Pranay Sethi** (Supra)**.** Hence the decisions cannot be construed as laying down the correct proposition of law. Now what remains to be considered is the precedential value of the decision in **Kajal** (Supra) **and Abhimanyu Prathap Singh** (Supra). Even in the absence of the decision of the Supreme Court like in Divya (Supra), this Court would not have followed the above decisions since the decisions were rendered contrary to the principle laid down by the Constitution Bench in **Pranay Sethi** (Supra). Hence to the extent which the decision in Kajal (Supra) and Abhimanyu Pratap Singh (Supra) applies the multiplier of '18' runs contrary to the decision of Constitution Bench in **Pranay Sethi** (Supra) has to be construed to have been decided on facts of that particular case . Thus this Court finds considerable force in the submission of the learned Senior Counsel for the Insurance Company that the multiplier has to be fixed at '15' alone and not at '18' as contended by the learned counsel for the appellant.

23. **Future interest :** - Under this head, this Court will have to consider two rival submissions. The Insurance Company contends that interest cannot be awarded for compensation under the head future treatment, whereas the claimant contends that interest awarded by the tribunal at 7% from the date of application till realisation is not sufficient. The grant of interest in a motor accidents claim is governed by Section 171 of the Motor Vehicles Act, 1988. Section 171 of the Motor Vehicles Act, 1988 reads as under :-

> **171. Award of interest where any claim is allowed. - Where any Claims Tribunal allows a claim for compensation made under this 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**.

23.1 A reading of the aforesaid provision makes it clear that the award of the interest is the discretion of the tribunal. Unless it is shown that the exercise of the discretion by the tribunal is arbitrary or capricious, the Appellate court may not interfere with the award of interest granted by exercising the discretion. However, having said so, the grant of interest also forms a substantial part of just and fair compensation as enshrined under Section 166 of the Motor Vehicles Act, 1988. Therefore answering

the first question, this Court is of the view that the tribunal while considering the claim for compensation cannot carve out distinct heads while granting interest. In other words, the entitlement for interest is on the entire amount of compensation and not on the amount awarded under a particular head.

23.2 Be that as it may, can the High Court, while exercising its appellate power, increase the rate of interest because the grant of interest by the tribunal falls within the realm of discretion exercised by the Tribunal. Normally, the Appellate Court will not interfere with the discretion as stated above unless it is shown as powers of discretion. But that by itself will not denude the power of the High Court to enhance the interest if sufficient reasons are made out.

23.3. In **Supe Dei (Smt) and others Vs National Insurance Company and another [(2009)4 SCC 513]**, the Apex Court held that in a claim under Section 166 of the Motor Vehicles Act 1988, 9% is the appropriate rate of interest to be awarded.

23.4. In the peculiar facts and circumstances of the case, this Court finds that the appellant/claimant is entitled for an enhancement at the

rate of interest. Thus the rate of interest is fixed as 9% from the date of the award 07.07.2020 till the realization.

24. As an upshot of these discussions, this Court finds that MACA No.483 of 2021 filed by the insurance company is liable to be dismissed. MACA No.223 of 2021 is partly allowed and the enhanced compensation granted by this Court is as follows :

Sl. No	Head of Claim	Amount claimed	Amount awarded by the tribunal	Enhanced amount of compensation	Total compensation awarded in the appeal
1	Future treatment charges	—-	—--	—--	3,00,000
1.1	Bystander expenses/ Attendant charges	10,00,000	10,00,000	37,80,000 (10,500x2x12x 15)	27,80,000 (37,80,000- 10,00,000-)
2	Pain and suffering	5,00,000	3,00,000	15,00,000	12,00,000 (15,00,000- 3,000,00)
3	Continuing and permanent disability	40,00,000	11,08,800	24,255x12x15 = 43,65,900	32,57,100 (11,08,800 -43,65900)

5	**Loss of conveniences and amenities in life**	**5,00,000**	**4,00,000**	**7,50,000**	**3,50,000 (7,50,000-400000)**
6	**Marriage prospects**	**Nil**	**Nil**	**3,00,000**	**3,00,000**
7	**Dietary expenses**	**Nil**	**Nil**	**3,00,000**	**3,00,000**
	TOTAL **CLAIM IS LIMITED TO**	**10185000** **5000000**	**44,94,223**		**84,87,100**

Accordingly, the appellant/claimant is awarded an additional compensation of Rs.84,87,100/- (Rupees eighty four lakhs eighty seven thousand one hundred only) over and above the compensation awarded by the Tribunal with interest @ 9% per annum from the date of petition till realization together with proportionate costs. The Insurance Company is directed to deposit the aforesaid amount within a period of 30 days from the date of receipt of a copy of this judgment as per the procedure prescribed. It is made clear that the appellant would also be entitled for proportionate cost in the appeal. Since the appellant has limited the claim in this appeal and this Court has granted compensation more than what is now claimed by the appellant, the Motor Accident Claims Tribunal Muvattupuzha, shall deduct the requisite court fee from the amount of

compensation. It is further ordered that out of the enhanced compensation granted by this Court, an amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) shall be transferred to the corpus fund as ordered by the tribunal. The same shall be operated only under the orders of the tribunal.

Sd/-

EASWARAN S.,

JUDGE

SMA