**IN THE HIGH COURT OF KERALA AT ERNAKULAM**
**PRESENT**

**THE HONOURABLE MR. JUSTICE EASWARAN S.**

**THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947**

**MACA NO. 2624 OF 2021**

**AGAINST THE AWARD DATED 18.09.2019 IN OPMV NO.124 OF 2017 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY**

**APPELLANT/PETITIONER:**

**ANOOP.K**
**AGED 42 YEARS**
**S/O. BALAN, RESIDING AT MOTTMMAL HOUSE,**
**P.OKAPPAD, KANNUR 670 006**

**BY ADV K.RAJESH SUKUMARAN**

**RESPONDENTS/RESPONDENTS:**

1 **SREEVALSAN.T.E**
**AGED 53 YEARS**
**S/O. KUNHIRAMAKURUP,RYAROTH HOUSE, P.O MAVILAYI,**
**KANNUR 670 622**

2 **UNITED INDIA INSURANCE COMPANY LIMITED**
**SADHOO BUILDING, FORT ROAD, KANNUR 670 001**
**REPRESENTED BY ITS MANAGER.**

**SRI. P.K MANOJKUMAR-SC**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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**EASWARAN S., J**

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**MACA No.2624 of 2021**

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*Dated this the 10th day of April, 2025*

# JUDGMENT

The appeal arises out of the award passed by the Motor Accidents Claims Tribunal, Thalassery, in O.P.(MV)No.124/2017.

2. The brief facts necessary for the disposal of the appeal are as follows:

The appellant, claiming to be Mason, met with a road traffic accident on 19.11.2016, while he was walking along the National Highway and when he reached the place of the accident, a motorcycle bearing Reg.No.KL-13AA/4915 came in a rash and negligent manner and hit against him. Immediately, the appellant was taken to Speciality Hospital, Kannur and was treated there as an inpatient till 25.11.2016. As a result of the accident, the appellant had suffered the following injuries: longitudinal fracture in the right upper tibia, swelling on the right

leg and pain in the right leg. According to the appellant, he was earning a monthly income of Rs.30,000/- by working as a Mason. The appellant also claimed that he had to undergo an implant surgery and the implant is yet to be removed. The Tribunal, on appreciation of evidence, found that the appellant could not prove the income as claimed. Therefore, the Tribunal fixed the notional income at Rs.8,000/- and granted a total compensation of Rs.1,71,500/-. Since the appellant did not suffer any permanent disability, no compensation was granted under the head permanent disability.

3. Aggrieved by the insufficiency in the grant of compensation, the appellant has approached this Court in the present appeal.

4. Heard, Sri.Rajesh Sukumaran - learned counsel appearing for the appellant and Sri.P.K.Manoj Kumar – learned counsel appearing for the Insurance Company.

5. On a consideration of the rival submissions raised across the Bar, this Court is of the considered view that the appellant is entitled to succeed.





6. As regards the notional income of the appellant is concerned, this Court finds that Tribunal erred in fixing the same at Rs.8,000/-. Going by the principles laid down by the Hon'ble Supreme Court in ***Angad Tiwari and Another v. National Insurance Company Ltd. and Another*** [2024 KHC 8590], this Court finds that the claimant is entitled to have the income fixed in terms of the minimum wage notified by the State of Kerala. In G.O.(P)No.28/2016/Fin. dated 26.02.2016, the State of Kerala has notified the minimum wage as Rs.16,200/-. Therefore this Court finds that an amount of Rs.16,200/- can be fixed as the notional income of the appellant.

7. Under the non-conventional heads also, this Court finds that the appellant is entitled for a reasonable enhancement.

8. The learned counsel for the appellant would, however, point out that going by the additional document produced in IA No.1/2025, which is a certificate issued by the Speciality Hospital, Kannur, dated 17.02.2025, the appellant is required to spend a further amount of Rs.1,00,000/- towards implant removal.





9. The aforesaid document is seriously disputed on behalf of the Insurance Company by the learned counsel. According to the learned counsel for the Insurance Company, it has been nine years since the accident occurred and the appellant cannot be granted such an amount towards future treatment. The learned counsel for the Insurance Company would further point out that as per the certificate issued by the Speciality Hospitality on 16.12.2019, the probable expenses was arrived at between Rs.60,000 – 70,000.

10. On contrary, the learned counsel for the appellant would submit that it is because of the financial stringency of the appellant that he was not able to remove the implant and that a reasonable enhancement be granted under the said head.

11. On a consideration of these aspects, this Court is of the view that the appellant could be granted an amount of Rs.60,000/- towards implant removal, since it is an admitted fact that the appellant had undergone surgery for placing the implant. The reason why this Court is not inclined to accept and grant an amount of Rs.1,00,000/- as expense for removal of

implant is that it has been nearly 8 and half years since the date of accident. But that by itself will not disentitle the appellant to claim a reasonable amount towards the implant removal.

Considering the totality of the facts and circumstances of the case, this Court is of the view that the appellant is entitled to succeed. The appeal is thus allowed and the appellant is entitled to enhanced compensation as follows:

| **Heads** | **Amount awarded by the Tribunal** | **Total compensation awarded in appeal** | **Enhanced amount of compensation** |
|---|---|---|---|
| Notional income of the appellant is fixed at Rs.16,200/- | | | |
| Loss of earnings | 32,000 | 97,200/- [16200x6] | 65,200/- [97200-32000] |
| Pain and suffering | 30,000/- | 40,000/- | 10,000/- [40000-30000] |
| Loss of amenities | 15,000/- | 25,000/- | 10,000/- [25000-15000] |
| Compensation towards future treatment/implant removal | Nil | 60,000/- | 60,000/- |
| **Total enhanced amount of compensation** | | | **1,45,200/-** |

Accordingly, the appellant/claimant is awarded an additional compensation of **Rs.1,45,200/-** (Rupees One Lakh Forty Five Thousand Two Hundred only) over and above the compensation

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awarded by the Tribunal. While calculating interest, the Insurance Company shall not be liable for interest on the amount of Rs.60,000/- granted as compensation for future treatment/implant removal. The appellant is thus entitled to interest @8% per annum from the date of petition till realization together with proportionate costs only on the enhanced compensation of **Rs.85,200/-** [i.e. excluding Rs.60,000/-]. The Insurance Company is directed to deposit the aforesaid amount within a period of two months from the date of receipt of a copy of this judgment. It is made clear that the compensation towards future treatment/implant removal i.e. Rs.60,000/- shall be payable only if the appellant produces a certificate regarding the implant removal before the Insurance Company. On such production alone the amount of Rs.60,000/- shall be released.

The appeal is ordered accordingly.

Sd/-

**EASWARAN S.**
**JUDGE**

ACR

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**APPENDIX OF MACA 2624/2021**

**PETITIONER ANNEXURES**

| | |
|---|---|
| **Annexure A1** | **THE TRUE COPY OF THE CERTIFICATE DATED 17.02.2025 ISSUED FROM THE SPECIALITY HOSPITAL, THANA, KANNUR.** |