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MACA NO.1791 OF 2016

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

FRIDAY, THE 14TH DAY OF MARCH 2025 / 23RD PHALGUNA, 1946

MACA NO. 1791 OF 2016

AGAINST THE ORDER/JUDGMENT DATED 16.07.2014 IN OPMV
NO.234 OF 2012 OF DISTRICT COURT & SESSIONS & MOTOR ACCIDENT
CLAIMS TRIBUNAL , KALPETTA

APPELLANT/PETITIONER:

SIVAKUMAR P, (MINOR)
DATE OF BIRTH 17.02.1999, REPRESENTED BY HIS NEXT
FRIEND AND GUARDIAN
FATHER, PACKTHAS, C/O.MANAGER, C.S.I.BALASADANAM
CHILDREN'S VALLEY, RIPPON, MEPPADY, WAYANAD DISTRICT.

BY ADV SMT.CELINE JOSEPH

RESPONDENT/RESPONDENT NO.2:

THE BRANCH MANAGER
NATIONAL INSURANCE COMPANY LTD, KALPANA SHOPPING
COMPLEX, MAIN ROAD, KALPETTA, WAYANAD-673121.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 14.03.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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JUDGMENT

The petitioner in O.P.(M.V.) No.234/2012 on the file of the Motor Accident Claims Tribunal, Kalpetta, is the appellant herein. (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 28.11.2011. According to the petitioner, on 28.11.2011 at about 05.30 p.m., while he was walking along the side of the road, a motorcycle bearing reg.no.KL 12D/1282 driven by the 1st respondent in a rash and negligent manner, hit him and he sustained serious injuries.

3. The 1st respondent is the driver cum owner and the 2nd respondent is the insurer of the offending vehicle. 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.3,06,000/- limited to Rs.3,00,000/-.

4. The insurance company filed a written statement, admitting the



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accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the documentary evidence Exts.A1 to A9 and C1. No evidence was adduced by the respondents.

6. 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.1,50,240/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioner preferred this appeal.

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

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

9. Heard Smt.Celine Joseph, the learned Counsel appearing for the petitioner/appellant, and Sri.P.K. Manoj Kumar, the learned Standing Counsel for the 2nd respondent.

10. In the accident the petitioner sustained fracture of the both tibia and fibula

11. As per Exhibit C1 disability certificate the petitioner suffered



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5% 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 5%, as fixed by the Tribunal.

12. By applying the decision of the Hon'ble Supreme Court in **Master Mallikarjun vs. Divisional Manager, National Insurance Company Ltd. 2014 (14) SCC 396**, the Tribunal has awarded a compensation of Rs.1,00,000/- towards permanent disability and a sum of Rs.50240 on the pecuniary heads and as such a total compensation Rs.1,50,240/- was awarded. Being dissatisfied by the compensation awarded by the Tribunal the petitioner approaches this Court.

13. One of the arguments advanced by the learned counsel for the petitioner is that since the petitioner was treated as inpatient for a period of 75 days in three sessions and had undergone operation also, it is to be treated as an exceptional case to the decision in **Master Mallikarjun** (Supra). On the other hand, the learned counsel for the 2nd respondent would argue that since the percentage of the disability is only 5%, the compensation awarded by the



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Tribunal is just and reasonable.

14. It is true that as per the decision in **Master Mallikarjun** (supra) the compensation that could be awarded under non pecuniary heads in case the percentage of disability of the child is upto 10% is only Rs.1,00,000/. However, as argued by the learned counsel for the petitioner, in this case the petitioner who was a 13 year old child was to be treated as inpatient for 75 days in three sessions and also had to undergone surgeries as the wound was infected. Even the decision in **Master Mallikarjun** (Supra) states that in exceptional cases a deviation from the compensation provided therein can be applied.

15. In the instant case, considering the fact that the petitioner was admitted as inpatient for a period of 75 days in three sessions and he had undergone surgeries also, I hold that Rs.1,00,000/- awarded on the non peculiar heads is on the lower side and hence it is enhanced to Rs.2,00,000/-.

16. Even in the decision in **Master Mallikarjun** (Supra) a sum of Rs.25,000/- was awarded to the parents for the inconvenience caused to them. Since, in the instant case the petitioner was treated as inpatient for a period of 75 days, I hold that a further sum of Rs.25,000/- can be awarded for the inconvenience and sufferings of the parents.



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

18. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.2,75,240/- as modified and recalculated above and given in the table below, for easy reference:

Sl. No.	Head of Claim	Amount awarded by Tribunal (in Rs.)	Amount Awarded in Appeal (in Rs.)
1	Medical and miscellaneous expenses	28990	28990
2	Bystander expense	11250	11250
3	Transportation expenses	10000	10000
4	Compensation for permanent disability	1,00,000	2,00,000
5	Inconvenience, hardship discomfort, disappointment, frustration and mental stress in life of parents	Nil	25000
	Total	150240	275240
	Enhanced	125000	

19. In the result, this Appeal is allowed in part, and Respondent No.2 is directed to deposit a total sum of Rs.2,75,240/- (Rupees Two Lakhs Seventy Five Thousand Two Hundred and Forty only), less the amount already deposited, if any, along with interest at the rate ordered by the



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Tribunal, from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today. (Enhanced compensation will carry 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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