

**Sasikumar vs E.C. Jose**

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**SooperKanoon Citation :** [sooperkanoon.com/1280870](http://sooperkanoon.com/1280870)

**Court :** Kerala

**Decided On :** Feb-24-2025

**Judge :** Honourable Mr. Justice C.Pratheep Kumar

**Appeal No. :** MACA/1058/2014

**Appellant :** Sasikumar

**Respondent :** E.C. Jose

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR MONDAY,  
THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946 MACA NO. 1058  
OF 2014 AGAINST THE AWARD DATED 08.03.2013 IN OPMV NO.1984 OF  
2006 OF MOTOR ACCIDENT CLAIMS TRIBUNAL & SPECIAL COURT FOR E.C.  
ACT CASES, THRISSUR APPELLANT: SASIKUMAR AGED 45 YEARS  
S/O.NARAYANAN NAIR,RESIDING AT RARIYAMKANDATH, VELLIYATT  
HOUSE,CHELAKKARA, THRISSUR DISTRICT BY ADVS. SRI.T.C.SURESH  
MENON SRI.A.R.NIMOD RESPONDENTS: 1 E.C. JOSE  
S/O.CHAKKU,RESIDING AT EDAKKALATHUR  
P.O,KIILLIMANGALAM,THRISSUR 680 552 2 BABU S/O.CHATHAN,RESIDING  
AT KARAKOLAMBU VEETIL,CHELAKKODE,THRISSUR 680 587 3 THE

UNITED INDIA INSURANCE COMPANY LIMITED ORISON  
COMPLEX,WADAKKANCHERY ROAD, KUNNAMKULAM,THRISSUR 680 503  
MACA NO. 1058 OF 2014 2 BY ADVS. SRI.S.K.AJAY KUMAR-SC SRI.AGI  
JOSEPH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY  
HEARD ON 24.02.2025, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING: MACA NO. 1058 OF 2014 3

## **JUDGMENT**

Dated this the 24th day of February, 2025 The petitioner in O.P.(M.V.) No.1984/2006 on the file of the Motor Accident Claims Tribunal, Thrissur, 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 08.07.2006. According to the petitioner, on 08.07.2006 at about 9.30 a.m., while he was driving an autorickshaw along with the Wadakkanchery-Chelakkara public road, a lorry bearing Reg.No.KL-8/D 187 driven by the 2nd respondent in a rash and negligent manner came in opposite direction and hit against the autorickshaw. As a result of the accident, the petitioner sustained serious injuries.

3. The 1st respondent is the owner , the 2nd respondent is the driver

and 3rd 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.2,59,500(limited to 2,30,000). MACA NO. 1058 OF 2014 4

4. 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.

5. The evidence in the case consists of the documentary evidence Exts.A12 to A18 and B1 were marked.

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.80,720 (rounded to 80,750) 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 Sri.T.C Suresh Menon, the learned Counsel appearing for the petitioner/appellant, and Sri.S.K Ajaykumar, the learned Standing Counsel for the 3rd respondent.

10. 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 MACA NO. 1058 OF 2014 5

the learned counsel for the petitioner is regarding the income of the petitioner as fixed by the Tribunal. According to him, the petitioner was working as autorickshaw driver, earning Rs.4500/- per month, but the Tribunal fixed his monthly income at Rs.3000/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

11. It is true that the petitioner could not prove his income, as

claimed in the OP. However from Ext.A16 driving licence and it is proved that the petitioner was an autorickshaw driver by profession. As per the dictum laid down by the Honble Supreme Court in the decision in

Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236], the notional income of a coolie, in the year 2006 will come to Rs.5500/-. Therefore, the petitioner being an autorickshaw driver by profession, his notional income is fixed at Rs.6500/-, for the purpose of computing the loss of disability.

12. In the accident the petitioner sustained the following injuries: Fracture right mandible in face ankle, multiple disfiguring injuries on face and lower jaw extending to neck, lacerated wound on cheek, scalp frontal.

13. Ext. A15 disability certificate shows that the petitioner suffered 6% permanent physical disability. The Tribunal, however, scaled down the percentage of disability of the petitioner to 3%, without assigning valid and MACA NO. 1058 OF 2014 6

cogent reasons. The law is settled that, if the Tribunal is not satisfied with the disability certificate produced by the petitioner, the remedy is to refer him to a medical board or higher Authority.(See Manikantan G. v. Janardhanan Nair and Others, 2021 (5)KHC 305). Having not done so, the Tribunal was not justified in scaling down the percentage of disability from what is shown in the disability certificate. I do find any grounds to disbelieve the said disability and as such the permanent physical disability of the petitioner is fixed as 6%.

14. On the date of accident, the petitioner was aged 38 years.

Therefore, 40% of the monthly income is to 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 15, as held in Sarla Verma v. Delhi Transport Corporation, [(2009) 6 SCC 121]. In the above circumstances, the loss of disability will come to Rs.98,280/-

15. Towards loss of earning, the tribunal has awarded only

Rs.9000/- being the income for 3 months @Rs.3000/-. Considering the nature of the injuries sustained and the percentage of disability suffered by the petitioner, the petitioner might have lost income at least for a period of 4 months. Therefore, towards 'loss of income' the petitioner is entitled to get a MACA NO. 1058 OF 2014 7 sum of Rs. 26,000/- (6500x 4 months).

16. Towards the head pain and sufferings, the Tribunal has

awarded Rs.12,000/-. The tribunal has not awarded any amount on the heads 'loss of amenities of life' and 'extra nourishment'. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

17. The petitioner sustained very serious injuries in the accident

and was treated as inpatient for 16 days. Because of the injuries sustained, the percentage of disability suffered and the length of treatment undergone by the petitioner, I hold that the compensation awarded by the Tribunal on the heads pain and sufferings, 'loss of amenities of life' and 'extra nourishment' are on the lower side and hence they are enhanced to Rs.30,000/-,20,000/- and 2000/- respectively. Towards damage to clothing Rs.500/- is awarded.

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

19. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.2,20,300/-, as modified and recalculated above and given in the table below, for easy reference: MACA NO. 1058 OF 2014 8

| Sl. No. | Head of Claim           | Amount awarded by Tribunal (in Rs.) | Amount Awarded in Appeal (in Rs.) |
|---------|-------------------------|-------------------------------------|-----------------------------------|
| 1       | Loss of earning         | Rs.9,000/-                          | Rs.26,000/-                       |
| 2       | Medical expenses        | Rs.27,320                           | Rs.27320                          |
| 3       | Bystander expenses      | Rs.3,200/-                          | Rs.3,200/-                        |
| 4       | Transportation expenses | Rs.3,000/-                          | Rs.3,000/-                        |
| 5       | Pain& Suffering         | Rs.12,000/-                         | Rs.30,000/-                       |
| 6       | Disability              | Rs.16,200/-                         | Rs.16,200/-                       |
| 7       | Disfiguration           | Rs.10,000/-                         | Rs.10,000/-                       |
| 8       | Loss of amenities       |                                     |                                   |

NIL Rs.20,000/- 9 Extra nourishment NIL Rs.2,000/- 10 Damage to clothing Nil 500 Total Rs.80720 rounded to Rs.2,20,300/- 80750/- Enhanced Rs.139550/-

20. In the result, this Appeal is allowed in part, and 3rd respondent

is directed to deposit a total sum of Rs.2,20,300/-(Rupees Two lakhs twenty thousand three hundred only), less the amount already deposited, if any, along with interest @ 8% per annum, from the date of the petition till deposit/realisation, excluding interest for a period of 23 days, the period of delay in filing the appeal, with proportionate costs, within a period of two

MACA NO. 1058 OF 2014 9 months from today. 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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