

**Sandeep Chandy vs Aby Kurian**

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**Court :** Kerala

**Decided On :** Mar-05-2025

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

**Appeal No. :** MACA/1457/2014

**Appellant :** Sandeep Chandy

**Respondent :** Aby Kurian

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR  
WEDNESDAY, THE 5TH DAY OF MARCH 2025 / 14TH PHALGUNA,  
1946 MACA NO. 1457 OF 2014 AGAINST THE AWARD DATED  
15.01.2014 IN OPMV NO.255 OF 2011 OF MOTOR ACCIDENT  
CLAIMS TRIBUNAL, PALA APPELLANT/PETITIONER: SANDEEP  
CHANDY S/O.CHANDY, PALIYATHARA HOUSE, PERIYAPURAM  
KARA, ONAKKOOR VILLAGE, ERNAKULAM DISTRICT. BY ADVS.  
SRI.THOMAS ABRAHAM (NILACKAPPILLIL) SRI.MANU TOM  
RESPONDENTS/RESPONDENTS:

1 ABY KURIAN S/O.KURIAN ABRAHAM, KATTUMBHAGOM HOUSE,  
EDATHWA.P.O., NEAR EDATHWA CHURCH, ALAPPUZHA DISTRICT.

689 573. 2 THE MANAGER HDFC ERGO GENERAL INSURANCE CO. LTD., 4TH FLOOR, K.T.OXFORD BUSINESS CENTRE, SREEKANDATH, RAVIPURAM, COCHIN.682 016. BY ADV SRI.K.B.RAMANAND THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

Dated this the 5th day of March, 2025 The petitioner in O.P.(M.V.) No.255/2011 on the file of the Motor Accident Claims Tribunal, Pala 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 28.11.2010. According to the petitioner, on 28.11.2010 at about 5 p.m., while he was riding a motor cycle, a car bearing registration No.KL-4Z-345 driven by the 1st respondent in a rash and negligent manner knocked him down and as a result of which he sustained serious injuries.

3. The 1st respondent is the owner cum driver 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.11,46,000/- limited to 10,00,000/-

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 oral testimony of PW1 and documentary evidence Exts.A1 to A18, and X1. 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.1,88,850/- 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. Thomas Abraham Nilackappillil, the learned Counsel appearing for the petitioner/appellant, and Sri.K.B. Ramanand the learned Standing Counsel for the 2nd 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 the learned counsel for the petitioner is regarding the income of the petitioner as fixed by the Tribunal at Rs.6,000/-. According to him, the petitioner was working as Khalasi in Tech Sharp Engineers (P)

Ltd., earning Rs.13,000/- per month, He has also relied upon Exhibit A14 salary certificate in that respect. The petitioner himself was examined as PW1 and claimed that he was getting an income of Rs.13,000/- from his job as Khalasi. The learned counsel for the insurer would argue that the employer was not examined and as such Exhibit A14 cannot be acted upon. It is true that the petitioner alone was examined to prove his income.

11. 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 2010 will come to Rs.7,500/-. In the above circumstances, considering the fact that the petitioner was a Khalasi and he has produced Exhibit A14 to substantiate the same, his notional income is fixed at Rs.10,000/-.

12. In the accident the petitioner sustained the following injuries: Acute sub dural hematoma and fracture of left temporal bone, traumatic optic nerve injury, exposure keratitis right eye and sprain neck.

13. As per Exhibit X1 disability certificate issued by the medical

board, the petitioner suffered 10% permanent physical disability. The Tribunal, however, scaled down the percentage of disability of the petitioner to 5%, without assigning valid and 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 10%.

14. On the date of accident, the petitioner was aged 28 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 17, 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.2,85,600/-.

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

Rs.24,000/- being the income for 4 months @ Rs.6,000/-. 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 6 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.60,000 (10,000x 6 months).

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

awarded Rs.25,000/- Towards 'bystander expenses' Rs.4,400/- was awarded and towards 'transport to hospital' Rs.2,000/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side. Towards 'loss of amenities of life', no compensation was awarded by the Tribunal.

17. The petitioner sustained serious injuries in the accident and

was treated as inpatient for 22 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, 'transport to hospital' and 'bystander expenses' are on the lower side and hence they are enhanced to Rs.50,000/-, Rs.8,000/- and Rs.5,500/- respectively. For the very same reasons the petitioner is also entitled for compensation on the head 'loss of amenities of life' and Rs.40,000/- will be a reasonable compensation on that head.

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 petitioner/appellant is entitled to get a total compensation of Rs.5,21,350/-, as modified and recalculated above and given in the table below, for easy reference: Sl. No. Head of Claim Amount awarded by Amount Awarded in

| Tribunal (in Rs.)                      | Appeal (in Rs.)        |
|----------------------------------------|------------------------|
| 1 Loss of earning 24,000/-             | 60,000/-               |
| (10,000x 6 )                           |                        |
| 2 Transport to hospital 2,000/-        | 8,000/-                |
| 3 Extra nourishment 2,000/-            | 2,000/-                |
| 4 Treatment expenses 70,250/-          | 70,250/-               |
| 5 Bystander expenses 4,400/-           | 5,500/-                |
| 6 Pain and suffering 25,000/-          | 50,000/-               |
| 7 Compensation for disability 61,200/- | 2,85,600/-             |
| 8 Loss of amenities Nil                |                        |
| 40,000/-                               |                        |
| Total 1,88,850/-                       | 5,21,350/-             |
|                                        | Enhanced Rs.3,32,500/- |

20. In the result, this Appeal is allowed in part, and Respondent

No.2 is directed to deposit a total sum of Rs.5,21,350/- (Rupees five lakh twenty one thousand three hundred and fifty only), less the amount already deposited, if

any, along with interest @ 8% per annum, from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today.

21. 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 sou.

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