

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

MACA.No. 1474 of 2005 ()

**AGAINST THE AWARD IN OPMV 173/1994 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 12-04-2005**

APPELLANT(S)/APPELLANT:

**VEERANKOYA
VALIYAVEETIL HOUSE, OLAVANNA, CALICUT.**

**BY ADVS.SRI.JOSE KURIAKOSE (VILANGATTIL)
SRI.JOSEPH A.VADAKKEL
SRI.GEORGE KARITHANAM VARGHESE
SRI.V.J.JOHN**

RESPONDENT(S):

- 1. K.P. LAKSHMANAN
S/O.GOPALAN, KANDARPPASSERY HOUSE, P.O.MANALLOOR
THRISSUR DISTRICT.**
- 2. MOHAMMED, S/O.CHEKKU, MANAKKEDAVAN
HOUSE, MOORIYAD, CHALAPPURAM
CALICUT.**
- 3. GIRIJAN, S/O.KORUKUTTY,
PADIPPUKANDATHIL HOUSE, NEDIYIRUPPU P.O., MALAPPURAM.**
- 4. THE ORIENTAL INSURANCE COMPANY LTD.,
CALICUT.**

**R,R1 BY ADV. SRI.V.CHITAMBARESH
BY ADV. SRI.T.C.SURESH MENON
R4 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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**P.R.RAMACHANDRA MENON
&
BABU MATHEW.P.JOSEPH, JJ**

M.A.C.A.No.1474 of 2005

Dated this the 23rd day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON,J

An award was passed by Motor Accident Claims Tribunal,Thrissur in O.P.M.V.173/94 on 12-4-2005 in respect of a road traffic accident occurred on 5.8.1993, when the mini lorry bearing no. KL 11 - 475, driven by the third respondent herein, of which the second respondent was the registered owner, hit against a jeep bearing No. KCV 1195, causing injuries to the driver of the jeep which led to the claim petition.

2. The case of the appellant is that the appellant is not the registered owner of the vehicle and that he had only hired the vehicle from the registered owner, in connection with his business and that he does not have the liability to satisfy the claim. The claim petition filed before the Tribunal was proceeded further and the appellant herein was initially declared as exparte. Pursuant to the award passed mulcting the liability upon the shoulders of the appellant, followed by revenue recovery proceedings, the appellant approached the Tribunal by filing I.A. No.2961/2004 and 2962/2004 to set aside the exparte verdict after condoning the delay. On moving by this Court by filing W.P.(C).17878/2004, interference was

made, subject to satisfaction of sum of Rs.50,000/- before the MACT within one month and the Tribunal was directed to consider and dispose the I.A s. The matter was heard afresh and the proceedings were finalized, based on the materials available on record. Exts. A1 to A17 were marked on the side of the claimant and the claimant was examined as PW1. Despite the opportunity obtained to the appellant herein,nobody was sought to be examined and the appellant himself did not choose to mount the box. A total sum of Rs.94,000/- was awarded under various heads, which was directed to be satisfied with interest @ 9% per annum from 5.2.1994 till 1.1.2001 and thereafter @ 6% per annum till realization, with cost and with liberty to have realized the court fee as specified in the award. This is sought to be intercepted by filing this appeal.

3. Despite the pendency of the matter for nearly 10 years, the appellant had not chosen to complete the steps in respect of the second respondent, who is stated as the registered owner. Going by the contents of the award, we find that the liability has been fixed on the respondents 1,2 and 4 before the Tribunal, who are the respondents in this appeal. The insurance company stands exonerated from the liability, for want of policy. We find that the award passed by the Tribunal is a just one and it does not require to be intercepted on any ground. More so, when the appellant did not

make use of the opportunity by adducing evidence. In the course of hearing, it is conceded by the learned by the Counsel for the appellant that the appellant himself had obtained possession of the vehicle from the concerned Police Station, by executing a 'Ky Chit' as the owner of the vehicle. This itself is a point or to the fact that the appellant was having control over the vehicle and was possessing and using the vehicle, though the registered ownership was not transferred to the name from the second respondent.

4. In the said circumstance, interference is declined and the appeal is dismissed. The appellant, however is set a liberty to proceed against the other concerned respondents in accordance with law, if he has got any legally sustainable cause of action. The appellant is required to deposit only the balance amount after giving credit to the sum of Rs.50,000/-, if already remitted before the Tribunal based on the directions given in W.P.(C).17878/2004.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P JOSEPH
JUDGE

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PA TO JUDGE

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