

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

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

MACA.No. 1954 of 2005 ()

AGAINST THE AWARD IN OPMV 620/1994 of M.A.C.T.,KOLLAM DATED 07-03-2003

APPELLANT/PETITIONER:

RAJANI, NEW BANGLAW,
UNNINMOODU, POOTHAKULAM, KOLLAM.

BY ADVS.SRI.JACOB SEBASTIAN
SRI.A.RASHID

RESPONDENTS:

* 1. I. ASHRAF, THARA VEEDU,
MANGALAM VILLAGE, ADOOR.

* 2. RAJU PAULOSE, ELLIKKAL HOUSE,
CHALAKKUDI, THRISSUR.

(R1 AND R2 WERE DELETED FROM THE PARTY ARRAY AS PER ORDER DATED
27.09.2013 IN I.A. NO. 2494 OF 2013, AT THE RISK OF THE APPELLANT)

3. MANAGER, NATIONAL INSURANCE COMPANY,
KOLLAM.

R,R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

BABU MATHEW P JOSEPH, JJ.

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M.A.C.A. No. 1954 of 2005

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Dated, this the 29th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in a road traffic accident involving the vehicle bearing No. **K8 B 6132** is the subject matter of challenge in this appeal. As a matter of fact, there was inordinate delay of 907 days in filing the appeal and the same was sought to be condoned by filing C.M. Appln No. 2757 of 2005. When the matter came up for consideration of this Court on 20.12.2005,, notice was ordered in the application to condone the delay. No process charges were remitted.

2. Matter came up for further consideration, nearly after 8 years, when the appellant sought for one week's time to cure the defect, and the same was granted on 04.03.2013. Since the defect was not cured completely another order came to be passed on 26.08.2013 in the following terms:

"The matter comes up in the defects list today. The defect is that, notices issued to respondents 1 and 2 have been returned with postal endorsement "not known". The defect was satisfied as early as on 28.02.2013, since the appellant

did not cure the defect. The matter was posted before the Court on 04.03.2013, on which date, the Court granted one week's time to cure the defect. The appellant did not cure the defect. Again the matter was posted before the Court on 16.08.2013, on that date also, this Court granted time. Even thereafter, the appellant did not cure the defect. That is why the matter comes up in the defects list of this Court today. When the matter is taken up, the counsel for the appellant against seeks time. Further time can be granted only on terms. Accordingly, one more week's time is granted on condition that the appellant pays Rs.1000/- (Rupees One thousand only) as cost to the Kerala State Mediation and Conciliation Centre and produces proof of payment within one week, failing which, the appeal would stand dismissed for non-prosecution."

3. Finally the Court was constrained to pass yet another order on 24.12.13 which reads as follows :

"This is an application to condone delay of 907 days in filing the appeal. Although we are not satisfied with the reasons stated in the affidavit accompanying the application, taking a lenient view, we condone the delay on condition that the applicant pays Rs.4500/- as costs to the Kerala State Mediation and Conciliation Center within one month and produces proof of payment, failing which the application would stand dismissed. However, for the

period of delay of 907 days the appellant would not be entitled to interest on the additional compensation awarded by this Court, if any.

4. Since the defect is still to be cured, the matter is placed for consideration of this Court. The learned counsel for the appellant submits that the direction given by this Court to satisfy an amount of Rs. 4500/- as cost payable to the Kerala State Mediation and Conciliation Centre, within one month could not be satisfied and seeks for further time. We find that the order passed by this Court on 24.10.2013 is a self contained one, which clearly stipulates, if the directions were not complied with, the proceedings will stand dismissed. We find no other alternative. The petition to condone delay is dismissed for non-satisfaction of the condition, and as a natural consequence the appeal as well.

Sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**