

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 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

MACA.No. 1981 of 2005 ()

AGAINST THE AWARD IN OP(MV)1668/2000 of M.A.C.T., THALASSERY DATED
25-02-2005

APPELLANT(S) /APPELLANTS/PETITIONERS:

1. K.RAJAN (Died)

SUPPLEMENTAL PETITIONERS:

2. K. SHYAMALA, AGED 40 YEARS, W/O. LATE K. RAJAN.

3. K. RENUKA, AGED 31 YEARS,
D/O. LATE K. RAJAN.

4. RANJINI K., AGED 27 YEARS,
D/O. LATE K. RAJAN.

5. K. JISHA, AGED 25 YEARS,
D/O. LAT K. RAJAN.

6. K. SEENA, AGED 22 YEARS,
D/O. LATE K. RAJAN.

(ALL ARE RESIDING AT KOTTIYIL HOUSE
P.O. ANCHAMPEEDIKA, KANNUR DISTRICT).

BY ADVS.SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN

M.A.C.A No.1981/2005

RESPONDENT (S) :

1. S.K.M.POULTRY SERVICES
MARKETING CENTRE, MANJAI UTHUKULI,
180 GANDHIJI ROAD
ERODE, MADRAS.
2. K. KATHIRUVAL, S/O. RAMASWAMY,
V. KATTOOR KOLLARVALLI, ERODE, DOOR NO.18
MAIN STREET, MADRAS.
3. NEW INDIA ASSURANCE CO.LTD.,
ERODE, TAMILNADU.

R3 BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 30-07-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

M.A.C.A No.1981/2005

Appendix

Appellant's Annexures

Annexure I - True copy of the returned applications filed to re-open the case dated 24.2.2005

Annexure II - True copy of the application filed to accept the witness list dated 24.2.2005

Annexure III - True copy of witness list dated 24.2.2005

Respondents' Annexures

Nil

/True copy/

sks/-

P.A to Judge

P.R.RAMACHANDRA MENON, J.

&

BABU MATHEW P.JOSEPH, J.

M.A.C.A .No.1981 of 2005

Dated this the 30th day of July, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

The damage sustained to the lorry bearing registration No.KRC 1019, which was owned and driven by the claimant by name K.Rajan (died subsequently) because of the accident occurred on 28.2.2000, was sought to be compensated by filing the claim petition. The case was that the claimant was carrying a load of river sand in the vehicle and while proceeding so, another lorry bearing registration No.TN-33/E 9939 driven by the 2nd respondent, owned by the 1st respondent and insured with the 3rd respondent herein came from the opposite direction and hit against the claimant's lorry thus causing serious damage. This was sought to be compensated by filing the claim

petition as mentioned above.

2. The owner and driver of the vehicle bearing registration No. TN-33/E 9939 were declared ex parte. The insurance company in their written statement pointed out that there was no negligence on the part of the concerned driver and that accident was only due to the negligence on the part of the claimant who was driving the concerned lorry at the relevant time and further that he did not possess a valid driving licence; apart from the fact that the vehicle belonging to him did not have a fitness certificate. No evidence was adduced by either side, but for marking Exts. A1 to A6. On conclusion of evidence, the learned Tribunal arrived at a finding that the accident had occurred only due to the negligence on the part of the 2nd respondent; that is the driver of the lorry bearing TN-33/E 9939. With regard to the claim put up by the claimant (sought to be substituted pursuant to his demise, by bringing the legal

heirs in the party array), it was observed by the Tribunal that the alleged loss stated as suffered by the claimant in respect of damage caused to the vehicle was not substantiated in any manner. The surveyor who quantified the loss was not examined before the Tribunal, but his report was marked as Ext. A2. The Tribunal observed that marking of a document is something different from proving the same. For want of proof with regard to the claim projected by the claimant, the claim petition was dismissed, which is sought to be intersected by filing the present appeal.

3. Despite service of notice, there is no representation for the 1st respondent insured, or the 3rd respondent insurer. The 2nd respondent/driver did not contest the matter before the Tribunal and hence was declared ex parte and ultimately the Tribunal found that the accident had occurred only due to the negligence on his part.

Since the said finding has not been chosen to be challenged by the 2nd respondent, we do not find it necessary to complete the service of notice to the 2nd respondent; more so in view of the course proposed to be ordered herein.

4. The learned counsel for the appellants submits that two I.As have been filed before the Tribunal; seeking to reopen the above case for examination of the 'insurance surveyor', who submitted the survey report and also producing a list of witnesses on 24.2.2005 . It is stated that the originals of said I.As were returned by the Tribunal without even numbering the same, observing that award was already passed. The factual sequence shows that the above I.As dated '24.2.2005' were presented before the Tribunal on the very same day, as borne by the endorsement and seal and they were listed for hearing on '24.6.2005'; whereas the award came to be passed on the previous date on '25.2.2005'.

5. It is true that, much lapse is there on the part of the appellants who did not take necessary steps before the Tribunal to substantiate the claim. Same is the position before this Court as well, as appeal was filed along with a petition to condone the delay of 125 days. Despite ordering notice in the said petition as early as on 16.12.2005, no follow up steps were pursued by the appellants to complete the service of notice to the 2nd respondent and the matter was simply left there for the past 10 years.

6. However, considering the sequence of events and the particular facts and circumstances, this Court finds that an opportunity could be given to the appellants to establish the facts and figures before the Tribunal; **subject to the rider that, if for any reason, the claim is found to be genuine and allowed by the Tribunal and compensation is awarded, interest would be payable**

only from the date of passing the award. Subject to this, the award passed by the Tribunal stands set aside and the matter is remanded to the Tribunal for fresh consideration, giving an opportunity to the parties concerned to establish their respective contentions.

The appeal is disposed of accordingly.

P.R.RAMACHANDRA MENON, JUDGE

BABU MATHEW P.JOSEPH, JUDGE

sks/-