

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

MACA.No. 865 of 2015 ()

AGAINST THE AWARD IN OPMV 228/2009 of ADDL.D.C. &
ADDL.MACT,ALAPPUZHA. DATED 18-10-2014

APPELLANT(S)/PETITIONER:

REJI AGED 41 YEARS
S/O.RAJU, KOLLANDA THEKKETHIL, WARD NO.12
MUTTAR PANCHAYATH, MITHRAKARI P.O.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENT(S)/RESPONDENTS:

1. M.N.DEVADAS
S/O.NARAYANAN, SYAM NIVAS
CHANGANASSERY MUNICIPAL WARD NO.26, PERUNNA EAST P.O.
CHANGANASSERY -686 102.

2. ORIENTAL INSURANCE COMPANY LTD
DIVISIONAL OFFICE NO.1, JEWEL ARCADE, LAYAM ROAD
KOCHI - 11.

3. USHA SOMAN
W/O.SOMAN, PARAYIL HOUSE, KILIMALA MURI
WARD NO.12, THRIKODITHANAM PANCHAYATH
THRIKODITHANAM P.O., CHANGANASSERY - 686 105.

4. THE NATIONAL INSURANCE CO.LTD
CHANGANASSERY - 686 101.

5. ANOOP
S/O.THOMAS, CHITHIRATHUNDIYIL HOUSE, KURICHI P.O.
CHANGANASSERY - 686 549.

R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R2 BY ADV. SRI.P.JACOB MATHEW
R2 BY ADV. SMT.PREETHY R. NAIR
R BY SRI.M.A.GEORGE
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

kkj

**K.SURENDRA MOHAN &
MARY JOSEPH, JJ.**

M.A.C.A. No.865 of 2015

Dated this the 10th day of July, 2015

J U D G M E N T

Surendra Mohan, J.

The petitioner's application under Section 166A of the Motor Vehicles Act, 1988 has been dismissed by the Motor Accidents Claims Tribunal, Alapuzha. This appeal is filed challenging the Award dated 25.02.2009 in OP(MV) No. 228 of 2009. The petitioner had in his claim petition, stated that his monthly income was Rs.8000/-.

2. The second respondent Insurance Company took up the contention that, the accident was caused due to the rash and negligent act of the petitioner himself and that, the application was not maintainable under Section 163A for the reason that the petitioner's monthly income exceeded the statutory limit of Rs.40,000/-

3. The counsel for the petitioner assails the findings of the Motor Accidents Claims Tribunal contending that,

both the grounds on which the petition has been dismissed are now pending consideration of the Supreme Court. According to the learned Counsel, though it was stated that the petitioner's monthly income was Rs.8000/-, no document had been produced in proof of the said statement. He also has a contention that the petition would be maintainable under the Workmen's Compensation Act. Therefore, his remedy may not be foreclosed by the dismissal of the present petition. On the above ground, he seeks interference.

4. Heard. Since even according to the petitioner, his monthly income was Rs.8000/-, the petition under 163A of the Motor Vehicles Act was not maintainable, his annual income being in excess of Rs.40,000/-. Therefore, we do not find any infirmity in the reasoning of the Tribunal. According to the learned Counsel for the petitioner, he has an option to prefer a claim against the first respondent under Workmen's Compensation Act. In view of the above,

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it is clarified that, the dismissal of OP(MV) No.228 of 2009 shall be without prejudice to the rights of the petitioner to claim compensation under the Workmen's Compensation Act.

This appeal is dismissed with the above observations.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE

kkj