

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

MACA.No. 2081 of 2015 ()

AGAINST THE AWARD IN OPMV 451/2003 of M.A.C.T., NEYYATTINKARA DATED 26-09-2013

APPELLANT(S)/R1:

**M.A.NAZAR AGED 52 YEARS
S/O.S.MUHAMMED KUTTY, AYSHA MANZIL, COURT ROAD
ALATHOOR, PALAKKAD.**

**BY ADVS.SRI.PRATHEESH.P
SMT.S.SEETHA**

RESPONDENTS/APPLICANT/R4.:

**1. ANTONY
S/O.NESAMONY, MALAMURINGAVILA VEEDU, MANNOOR DESOM
VATTUVILA, MANJALUMMOODU, KANYAKUMARI DISTRICT.**

**2. THE DIVISIONAL MANAGER
UNITED INDIA INSURANCE CO.LTD.
THIRUVANANTHAPURAM-695 001.**

**R2 BY ADV. SRI.K.KESAVANKUTTY
R BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
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**M.A.C.A.No.2081 of 2015 &
C.M.Appln.No.2327 of 2015**
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Dated this the 29th day of September, 2015

JUDGMENT

P.N.Ravindran, J.

This appeal was filed on 14.07.2015 along with C.M.Appln. No.2327 of 2015 to condone the delay of 545 days in filing the appeal. The application to condone the delay was heard and dismissed by us by order passed on 20.8.2015. Consequently, by judgment delivered on the same day, the appeal was dismissed as barred by limitation.

2. After the application to condone the delay and the appeal were dismissed but before the order/judgment were signed, Sri.P.Pratheesh, learned counsel appearing for the appellant submitted that the appeal may be posted for being spoken to so as to enable the appellant to withdraw the appeal. The case was accordingly posted for being spoken to today in chambers. Sri.P.Pratheesh, learned counsel appearing for the appellant and Sri.K.Kesavankutty, learned counsel appearing for the third respondent insurer were present. The learned counsel appearing for the appellant submitted that instead of dismissing the application to condone the delay on the merits and consequently dismissing the appeal as barred by limitation, the

appellant may be permitted to withdraw the appeal and the application to condone the delay.

In the light of the aforesaid submission, we review and recall the order passed by us on 20.8.2015 dismissing the application to condone the delay as also the judgment delivered by us on the same day dismissing the appeal as barred by limitation and dismiss C.M.Appln.No.2327 of 2015 and M.A.C.A.No.2081 of 2015 as withdrawn. The second respondent insurer will be free to withdraw the sum of Rs.25,000/- deposited by the appellant in terms of the first proviso to sub-section (1) of section 173 of the Motor Vehicles Act, 1988 and proceed against the appellant to realise the balance amount due from him under the impugned award.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**

/true copy/

P.A. To Judge

vpv