

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

MACA.No. 2713 of 2015 ()

AGAINST THE AWARD IN OPMV 361/2007 of M.A.C.T., VATAKARA DATED
15.1.2010

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APPELLANT(S)/1ST RESPONDENT:

K.P.BINOY, AGED 34 YEARS,
S/O LATE KRISHNAN, KRISHNA NIVAS, P.O. MEPPAYIL,
VATAKARA, (RC OWNER OF KL-11-F-3744 NO. JEEP)

BY ADVS.SRI.ZUBAIR PULIKKOOL
SRI.P.S.BINU

RESPONDENT(S)/2ND RESPONDENT:

THE UNITED INDIA INSURANCE COMPANY LIMITED,
P.B. NO.17, CITY COMPLEX, NEAR OLD BUS STAND ,
MAIN ROAD,VATAKARA-673 101.

BY SRI.JOHN JOSEPH VETTIKAT

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 20-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.No.2713 of 2015
and
C.M.Appln.No.3167 of 2015

Dated this the 20th day of October, 2015.

JUDGMENT

Ramachandra Menon, J.

This appeal has been filed by the 1st respondent before the Tribunal, who was the owner of the jeep, bearing Registration No.KL-11/F-3744, being aggrieved by the award dated 15.01.2010 passed by the Motor Accidents Claims Tribunal, Vatakara. The claim was preferred by the claimant in respect of the injuries sustained involving the vehicle belonged to the appellant. The accident was on 29.01.2007. While so, because of the rash and negligent driving of the jeep, it hit against a bus and then an electric post, causing injuries to the passengers which were sought to be compensated by filing the claim petitions. Both the claim petitions preferred by the concerned injured/applicants were considered together. The

appellant on receipt of summons appeared before the Tribunal and sought to contest the matter by filing the written statement. The Insurance Company took up a contention that on the relevant date the driver was not authorised to drive a transport vehicle and that there was violation of the statutory provisions and the conditions of the policy. With reference to the materials on record, this aspect was discussed in detail by the Tribunal as given in paragraph 25 of the Award. It was accordingly that the compensation ordered to be satisfied to the claimant was permitted to be recovered by the Insurance Company after satisfying the same to the claimant. It was pursuant to the further steps taken by the Insurance Company that the appellant has sought to approach this Court by filing a petition to condone the delay of 1896 days.

2. Heard the learned counsel for the appellant in detail.

3. The explanation for delay as given in the affidavit dated 01.7.2015 is as follows:-

"I am the petitioner herein and the appellant in the above filed challenging the award in O.P(MV)

361/2007 dated 15.1.2010. The copy application filed on 17.6.2015. Stamp called on 20.6.2015. The same is produced on 22.6.2015. The certified copy ready on 23.6.2015 and delivered on 24.6.2015. The appeal should have been filed on or before 17.9.2010. I am working in a private firm at Mumbai. When the notice received in the above case I have arranged lawyer to proceed with the case. Later the award was passed and in paragraph 25 of the award there is a finding against me. The impact of the award was not informed to me. Later upon the revenue recovery proceedings initiated by the 1st respondent I was informed from my house that the household items had been seized by Village Officer. Immediately then I came back from Mumbai and enquired about the case. It is reliably learned that they are going to sell the household items which is seized from my house and I was advised that they will not proceed further after the public auction of the above said household items. Those household items were sold in a public auction for about Rs.30,000/-. But again the respondent proceeded with the revenue recovery proceedings. Now I was advised that I have a good case in appeal but there are considerable delay in filing the appeal. The delay is caused due to the above said reason and not wilful or deliberate. If the delay is not condoned I will be put to untold loss and hardship.”

From the above, it is clear that, though the matter was sought to be contested by the appellant and though the Award was passed on 15.01.2010, the copy application for obtaining the copy of the award was filed on 17.6.2015, which was delivered on 24.6.2015. Absolutely no explanation is given with regard to the delay of more than five years in submitting the copy application. The version of the appellant is that he

was working in a private firm at Mumbai and that he came to know of the verdict only much later, when coercive proceedings were taken against him in turning back to the lawyer to take necessary steps. We find that absolutely no reason has been stated to condone the inordinate delay of more than five years (1896 days). The so-called explanation offered by the appellant is never liable to be called an explanation; much less any satisfactory explanation. We do not find any reason to condone the delay. The application to condone the delay stands dismissed. As a natural consequence, the appeal as well.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.