IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

MACA.No. 1607 of 2014 ()

AGAINST THE AWARD DATED 02-04-2011 IN OPMV 141/2006 of ADDL. DISTRICT & ADDL. MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA

APPELLANT/2ND RESPONDENT:

MADHUKUMAR,
S/O.HARIHARAN ACHARY, PANTHAPLAKIZHAKKETHIL HOUSE,
R.P.C P.O., MUNDAKAAM, KANJIRAPPALLY.

BY ADV. SRI.P.H.SHAJAHAN

RESPONDENTS/PETITIONERS AND RESPONDENTS 1 AND 3:

1. SHEEBA SANTHOSH,
W/O.SANTHOSH KURIAN, SANTHOSH BHAVAN, PARUMALA MURI,
KADAPRA VILLAGE, PATHANAMTHITTA.

2. JOSEPH S. KURIAN
S/O.SANTHOSH KURIAN, SANTHOSH BHAVAN, PARUMALA MURI,
KADAPRA VILLAGE, PATHANAMTHITTA, (MINOR)
REP. BY GUARDIAN MOTHER AND NEXT FRIEND MOTHER
1ST PETITIONER SHEEBA SANTHOSH.

3. JEENA S. KURIAN
D/O.SANTHOSH KURIAN, SANTHOSH BHAVAN, PARUMALA MURI,
KADAPRA VILLAGE, PATHANAMTHITTA, (MINOR)
REP. BY GUARDIAN MOTHER AND NEXT FRIEND MOTHER 1ST
PETITIONER SHEEB SANTHOSH.

4. T.S.KURIAN, AGED 70 YEARS,
SANTHOSH BHAVAN, PARUMALA MURI, KADAPRA VILLAGE,
PATHANAMTHITTA.

5. ALEYAMMA KURIAN,
W/O.KURIAN, SANTHOSH BHAVAN, PARUMALA MURI,
KADAPRA VILLAGE, PATHANAMTHITTA.

6. RATHEESH, AGED 23 YEARS
S/O.SHELVAN ACHARI, PLAMOOTTIL HOUSE, PARUMALA MURI,
KADAPRA VILLAGE, PATHANAMTHITTA.

7. DIVISIONAL OFFICER
ORIENTAL INSURANCE CO.LTD, DIVISIONAL OFFICE,
KOTTAYAM.

R-R7 BY ADV. SRI.MATHEWS JACOB (SR.)
R-R7 BY ADV. SRI.P.JACOB MATHEW
R1-R5 BY ADV. SRI.AJEESH K.SASI
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
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M.A.C.A.No.1607 of 2014
= = = = = = = = = = = = = =
Dated this the 10th day of June, 2015

JUDGMENT

Ravindran, J.

We have by order passed today dismissed C.M.Application No.1833 of 2014 to condone the delay of 1081 days in filing this appeal. This appeal is accordingly dismissed as barred by limitation.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
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C.M.Application No.1833 of 2014
In
M.A.C.A.No.1607 of 2014
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O R D E R

Ravindran, J.

The prayer in this application is to condone the delay of 1081 days in filing M.A.C.A.No.1607 of 2014.

2. M.A.C.A.No.1607 of 2014 arises from the award passed by the Motor Accidents Claims Tribunal, Pathanamthitta on 02.04.2011 in O.P.(MV) No.141 of 2006. The appellant is the second respondent therein. The certified copy of the impugned award produced along with the claim petition discloses that it was applied for on 13.02.2014, that the stamp papers were called for on 17.02.2014 and produced on 20.02.2014, that the copy was made ready on 21.02.2014 and that it was delivered over to the learned counsel for the appellant in the court below on 24.02.2014. Going by the certified copy produced along with the appeal memorandum, the appeal ought to have been filed in this court on or before 01.07.2011. The instant appeal was filed only on

24.06.2015 with a delay of 1081 days as aforesaid. The delay of 1081 days is explained in paragraph 3 of the affidavit sworn to by the appellant in support of the application. Paragraph 3 is extracted below for easy reference:-

> "3. It is respectfully submitted that the application for obtaining copy of the award was made by our counsel on 13.02.2012 and the same was received from the tribunal on 24.02.2014 against the notified date of 25.02.2014. It is submitted that the judgment in the matter was delivered on 02.04.2011 and accordingly, the above appeal ought to have been filed on or before 02.07.2011, but he same has been filed only on 24.06.2014 and thus there occurred a delay of 1081 days in filing the above appeal. It is submitted that though the notice was served on me on the above petition, I have duly intimated the authorities of the Insurance Company regarding the details of the accident, including the details of the rider of my motor cycle. But I under stands now that the tribunal proceeded in the matter as the 1st respondent himself was the rider and thus the above award is passed on wrong appreciation of evidence. I was under the bonafide belief that, since the police charge sheet is clear and the matter was informed to the insurance authorities, award of the tribunal to pay the compensation if any will be made liable on the insurance company. On receiving the notice on the execution

> petition from the tribunal only, I came to know that the award is passed permitting the insurance company to recover the amount from me. Immediately, I made arrangements to obtain the documents and the counsel obtained the copy of award as said above. Since other records in police charge sheet and such other documents also necessitated in order to avail of proper remedies, I have obtained such documents also. Therefore after obtaining the copies as said above I contacted my counsel and made arrangements and filed the appeal now. The delay of such 1081 days was caused for the said reasons and the same is not due to any willful latches or negligence from my part and the same is liable to be condoned. I have substantial contentions on merits in the case and if the said delay is not condoned, the same will cause irreparable injury, loss and hardships."

3. The substance of the averments herein is to the effect that the copy was applied for on 13.02.2012 and the same was received on 24.02.2014. He has also averred that though upon receipt of summons from the Motor Accidents Claims Tribunal he had duly intimated the details of the accident, including the details of the person who was riding his bike to the insurer, the Tribunal has proceeded on the basis that the first respondent in the claim petition was riding the bike. He has also averred that since the police charge sheet is clear

and the matter was informed to the insurer, he was under the bona fide belief that the insurer will be held liable to pay the compensation. He has further averred that he came to know about the award permitting the insurer to recover the amount paid by it as compensation from him only on receipt of notice on the execution petition. The seventh respondent, the insurer of the motor vehicle involved in the accident has filed a counter affidavit contending that the award was passed as early as on 02.04.2011 and that the appellant has not shown sufficient cause for the long delay of 1081 days. The counter affidavit also proceeds to state that the appellant has not chosen to explain the delay in applying for the certified copy of the award.

4. The impugned award was passed on 02.04.2011. The appellant was the second respondent before the Motor Accidents Claims Tribunal. He did not enter appearance before the Tribunal, not withstanding service of notice, with the result he was set ex parte. The appellant has no case in the instant appeal that he is not the owner of the motor bike involved in the accident. The seventh respondent herein (the third respondent before the Tribunal) who is the insurer of the motor bike belonging to the appellant filed a written statement contending that the first respondent who was driving the

motor bike at the relevant time did not possess a valid driving licence. The first respondent did not enter appearance and therefore he was also set ex-parte by the Tribunal. Before the Tribunal, the insurer pressed into service Ext.A7 charge sheet wherein the first respondent had been charge sheeted for the offence punishable under section 3(1) read with section 181 of the Motor Vehicles Act, 1988 for driving the motorcycle without a licence. Relying on Ext.A7, the Motor Accidents Claims Tribunal held that on the relevant date, the first respondent did not possess a valid driving licence. In that view of the matter, the Motor Accidents Claims Tribunal allowed the insurer to recover the compensation paid by it from the owner and driver of the motor bike.

5. The appellant has no case that in the instant appeal that the first respondent possessed a valid driving licence. His contention is that the motor bike at the relevant time was driven by someone else. The explanation offered by the appellant in the instant case for the long delay of 1081 days is that upon receipt of summons from the Tribunal he had informed the insurer about the details of the person who was driving the bike and also his driving licence particulars. He has also stated that he was under the belief that the insurer will be held liable to pay the compensation. However he has not at all explained the reason why he had not entered appearance in the Motor

Accidents Claims Tribunal or as to whether he had made any enquires with the insurer at any point of time after he contacted the insurer upon receipt of summons, to ascertain the progress of the case. In short there is no explanation from the side of the appellant as to the reason why he did not apply for a certified copy of the impugned award which was delivered on 02.04.2011 till 13.02.2014.

In the light of the above facts we are not persuaded to hold that the appellant has shown sufficient cause for the long delay of 1081 days in filing the appeal. The application fails and it is accordingly dismissed.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
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