

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

MACA.No. 2055 of 2014 ()

AGAINST THE AWARD IN OPMV 114/2005 of M.A.C.T., NEYYATTINKARA
DATED 26-02-2011

APPELLANTS/APPLICANTS:

1. AMBIKA DEVI, AGED 55 YEARS
D/O SUMANGALADEVI, RESIDING AT HARIDALAYAM
KULAKUDIYOORKONAM, NEMOM VILLAGE, THIRUVANANTHAPURAM

2. HARITHA A NAIR, AGED 27 YEARS
D/O AMBIKADEVI, RESIDING AT HARIDALAYAM
KULAKUDIYOORKONAM, NEMOM VILLAGE, THIRUVANANTHAPURAM

3. HARIKRISHNAN NAIR, AGED 24 YEARS
S/O MADAVANKUTTY NAIR, RESIDING AT HARIDALAYAM
KULAKUDIYOORKONAM, NEMOM VILLAGE, THIRUVANANTHAPURAM

BY ADVS.SRI.R.NIKHIL
SRI.BINU PAUL (NETTOOR)

RESPONDENTS/RESPONDENTS:

1. SREENIVASAN,
S/O GANEESAN ASARI, LEKSHMI BHAVAN, SINGLE THIRUV
BALARAMAPURAM, THIRUVANANTHAPURAM

2. NISHADH,
S/O MUHAMMED ABDUL KHADAR, KURUVIKATTUVILA VEEDU
IDICHAKKAPLAMOODU, PARASSALA

R1 BY ADV. SRI.RAJESH P.NAIR
R1 BY ADV. SRI.M.S.MOHAMMED SHAMIM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

**C.M.Appln No.2350 OF 2014 IN
M.A.C.A.No.2055 of 2014**

Dated this the 13th day of January, 2015

ORDER

Ramachandran Nair, J.

Heard the learned counsel for the appellant and the learned counsel for the first respondent. There is no appearance for the second respondent. There is a delay of 1138 days in filing the appeal. It is submitted by the learned counsel for the appellant that a review petition was pending as I.A.3738/2011. That was dismissed for default and thereafter I.A.No.4888/2012 was filed for restoration of the review petition filed. The delay petition was dismissed and subsequently the review petition was also dismissed. Challenging the said order O.P. (MAC) No.102/2014 has been filed. The appellant has separately filed the present appeal also. Having regard to the averments in the affidavit in support of the application, even though there is vehement opposition by the first respondent, we condone the delay.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.**

M.A.C.A.No.2055 OF 2014

Dated this the 13th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

On consent of the learned counsel for the appellants and the learned counsel for the first respondent, the appeal is taken up for disposal. The learned counsel for the appellants submits that the O.P. has been dismissed in the light of the alleged inconsistency in the pleadings and since the appellants have got sufficient pleas to maintain the application, they may be given a further opportunity to amend the O.P. before the Tribunal below.

2. The learned counsel for the first respondent submits that the first respondent has been unnecessarily impleaded before the Tribunal as he had nothing to do with the offending vehicle. It is seen that the accident occurred on 11.8.2004 at 7.30 p.m. and offending vehicle is KL-01-H-9021. Ext.A2 is the final report and Ext.A1 is the FIR in Crime No.398/2004 of the Parassala Police Station. The second respondent herein is the owner cum driver

going by Ext.A2 also. The learned Tribunal took the view that actually the owner of the vehicle has not been impleaded and the person impleaded as owner is not proved to be the true owner of the vehicle. In the light of the above finding, the O.P. has been dismissed.

We are of the view that the appellants can be granted one more opportunity to put the records straight by filing proper amendment application. The learned counsel for the appellants submits that while filing the amendment application, the name of the first respondent will be removed. The same is recorded.

The appeal is allowed. The award is set aside and the matter is remanded back for consideration afresh. The application for amendment will be filed within one month which will be duly considered by the Tribunal. The parties will appear before the Tribunal on 25.02.2015. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

