

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID

TUESDAY, THE 18TH DAY OF SEPTEMBER 2012/27TH BHADRA 1934

OP (MACT).No. 2217 of 2012 (O)

OP (MV)No.1272/1997 of M.A.C.T.,KOTTAYAM

PETITIONER:

BIJU ALEX, AGED 36 YEARS
S/O.ALEXANDER, CHIRAKKADAYIL HOUSE
CHAMAKALA P.O.KOTHANALLOOR, VAIKOM, KOTTAYAM
REPRESENTED BY HIS POWER OF ATTORNEY MR.RY JOSEPH.

BY ADVS.SRI.GIGIMON ISSAC
SRI SHAJI THOMAS
SRI.N.NAGARESH
SRI.BINU PAUL
SRI.T.V.VINU
SRI.G.JAYAPRAKASH

RESPONDENTS:

1. KUNJUMOL JOMON
W/O.JOMON,EZHUTHUPURAYIL HOUSE, PARIYARAMANGALAM
KADAPLAMATTOM P.O. KOTTAYAM-686571
2. N.G.SHAJI,
S/O.GOPALAN, NELLYCKAL HOUSE
KUZHIMATTOM P.O. KOTTAYAM -686533
3. ORIENTAL INSURANCE CO LTD
KOTTAYAM -686002

THIS OP (MACT) HAVING COME UP FOR ADMISSION ON 18-09-2012,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. (MAC) .NO.2217/2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE POWER OF ATTORNEY DATED 28/2/2012.

EXT.P2 TRUE COPY OF THE AWARD OF M.A.C.T.KOTTAYAM DATED
21/3/2001.

EXT.P3 TRUE COPY OF THE PASSPORT OF THE PETITIONER.

EXT.P4 TRUE COPY OF THE EX-PARTEE PETITION (I.A NO.6282/2011).

EXT.P5 TRUE COPY OF THE DRIVING LICENSE WITH BADGE NUMBER.

EXT.P6 TRUE COPY OF THE PETITION AND THE LIST OF DOCUMENT.

EXT.P7 TRUE COPY OF THE ORDER PASSED BY THE TRIBUNAL BELOW DATED
25/5/2012.

EXT.P8 CERTIFIED COPY OF THE B-DIARY PROCEEDINGS.

RESPONDENTS' EXHIBITS : NIL.

True Copy

P.S TO JUDGE

HARUN-UL-RASHID , J .

O . P (MAC).NO. OF 2012

DATED THIS THE 18TH DAY OF SEPTEMBER, 2012

JUDGMENT

Ext.P7 order dated 25/5/2012 passed by the Motor Accidents Claims Tribunal is under challenge. The order was passed in the petition filed by the petitioner under Order IX Rule 13 of the Code of Civil Procedure for setting aside the award in O.P.(MV) No.1272/1997 passed on 21/3/2001.

2. The 1st respondent herein as claimant filed O.P.(MV) No.1272/1997 claiming compensation for the injuries sustained by her in a motor vehicle accident. Ext.P2 is the copy of the award passed by the MACT, Kottayam on 21/3/2001. The Tribunal passed the award to recover and realise an amount of ₹30,343/- as compensation with 9% interest per annum. The 3rd respondent- Insurance Company being the insurer was directed to deposit the amount within one month from the date of the award. The Tribunal also held that the 2nd respondent has violated the policy conditions and the 3rd respondent is liable to pay the

O.P.(MAC).No.2217/2012

compensation to the petitioner with liberty to get it reimbursed from respondents 1 and 2. The Tribunal issued a notice soon after the filing of the O.P. to respondents 1 to 3. The case was posted for return of notice to 27/8/1997. As per the proceeding sheet as the respondents 1 and 2 refused to accept the notice and as there was sufficient service of notice, respondents 1 and 2 set ex parte. Respondents 1 and 2 in the O.P. are the petitioner and 2nd respondent herein. The Tribunal also noticed the fact that when revenue recovery proceedings were issued against the owner and driver in E.P.No.28/2002, the owner has filed an application for setting aside the award as I.A.No.1399/2002 and that was dismissed. The owner filed two writ petitions before this Court. That writ petitions were also dismissed. It is noticed by the Tribunal that only after the dismissal of those writ petitions, after the dismissal of the aforesaid IA and O.P., the petitioner herein submitted an application for setting aside the ex parte award. The Tribunal further noticed the fact that the petitioner herein and the owner have refused to accept the notice. Therefore, they were set

O.P.(MAC).No.2217/2012

ex parte. The Tribunal also noticed the fact that the notice was not returned with endorsement 'addressee left India'. Therefore the Tribunal concluded that the notice was issued to the petitioner in the correct address and there was proper service and on that basis he was set ex parte.

The award was passed on 21/3/2001. Petitioner filed the application on 14/11/2011. There is inordinate delay in filing application for setting aside the award. The Tribunal found that sufficient reasons have not been stated in the application for setting aside the ex parte award. The contentions of the petitioner were examined in detail and this Court finds that there is no legal infirmity in passing Ext.P7 order, which is under challenge in this writ petition. I also agree with the findings recorded by the Tribunal.

The writ petition is devoid of any merit and accordingly dismissed.

**HARUN-UL-RASHID ,
JUDGE .**

kcv .

O.P.(MAC).No.2217/2012