

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

OP (MAC).No. 1412 of 2011 (O)

OPMV 360/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOZHIKODE

PETITIONER :

**P.V.NARAYANANKUTTY NAMBIAR,AGED 53 YEARS,
S/O.M.KUTTAN NAIR, MURINGOLI VIA.
KAKKODI, KOZHIKODE DISTRICT.**

**BY ADVS.SMT.LATHA PRABHAKARAN
SRI.K.M.JAMALUDHEEN**

RESPONDENT :

**THE NEW INDIA ASSURANCE COMPANY LIMITED,
2ND FLOOR, V.K.BUILDING, CHEROOTTY ROAD,
CALICUT-673032.**

BY ADV. SRI.M.JACOB MURICKAN

**THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 05-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

OP (MAC).No. 1412 of 2011 (O)

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF AWARD IN OP(MV) NO. 360/96 DT 4/1/2007 OF 2ND ADDL. M.A.C.T. KOHIKODE.
- P2: COPY OF JUDGMENT OF THIS HON'BLE COURT IN M.A.C.A. 1753/2007 & CROSS OBJECTION NO. 72/09 DT 9/12/2009.
- P3: COPY OF EXECUTION PETITION NO. 64/2010 IN OPMV NO. 360/96 OF M.A.C.T.KOZHIKODE.
- P4: COPY OF THE ORDER OF THE M.A. C.T. KOZHIKODE IN E.P. NO. 64/2010 DT 30/12/2010
- P5: COPY OF THE STATEMENT FILED BY THE RESPONDENT ALONG WITH THE CALCULATION DETAILS.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J

O.P(MAC) No.1412 of 2011

Dated this the 05th day of March, 2015

J U D G M E N T

The only issue raised in the above original petition is as to the propriety of the order passed by the Motor Accidents Claims Tribunal at Ext.P4 in an execution petition filed by the petitioner herein. The petitioner is the claimant who was awarded amounts as compensation in a motor accident in O.P(MV) No.360/1996. The respondent Insurance Company in the Original petition was the respondent in the execution petition. The Insurance Company filed a statement of payment made before the Tribunal and the Tribunal, on the basis of the statement alone, closed the execution petition. The reason stated by the Tribunal is that no counter statement has been filed by the petitioner. The petitioner contends that in the execution petition itself, the petitioner had listed out the payments made and

adjustments to be made.

2. Obviously the controversy seems to be as to the adjustments of the amounts paid; whether it has to be initially towards the interest or the award amounts. The issue is no longer res integra. A Division Bench of this Court in **Oriental Insurance Co.Ltd v. Nirmala and others (2007(1) KLT 38)** found that in appropriating amounts deposited, adjustments would be made first towards interest and then costs and then towards the principal amount. The award amounts are hence adjusted only after the interest and costs are fully paid up and till then interest keeps running on the principal amount. The said principle as borne out from Order XXI Rule 1 of the Civil Procedure Code, 1908 was found to apply in the case of the claims made under the Motor Vehicles Act 1988 also. Hence the Tribunal would have to consider the issue afresh. Ext.P4 would stand set aside. The MACT Kozhikode shall restore EP 64/2010 to

opmac1412/2011

: 3 :

its file and decide the issue as indicated in **Oriental Insurance Co.Ltd. (supra)** as expeditiously as possible. Both sides will be permitted to file statement showing the appropriation.

The original Petition is disposed of. No costs.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge