

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

O.P.(MAC).No.5 of 2015 (O)

[AGAINST THE ORDER I.A.NO.2946 OF 2013 IN O.P.(V).363/2003
(EP 56/2003) OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
ATTINGAL].

PETITIONER(S):-

SUNIL KUMAR, AGED 40 YEARS, S/O.RAJAPPAN NAIR,
ANIL BHAVAN, 9/954, KONCHIRA, VEMBAYAM, NEDUMANGAD.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN.

RESPONDENT(S):-

1. DIVISIONAL MANAGER,
THE ORIENTAL INSURANCE CO LTD, DIVISIONAL OFFICE-II,
ULLOOR, MEDICAL COLLEGE, THIRUVANANTHAPURAM-695011.
2. NIZAR, S/O.BETHAR,
KATAKALIL HUSSAIN MANZIL,
THOTTATHIL KARAMURI, MANICKAL VILLAGE, NEDUMANGAD,
THIRUVANANTHAPURAM-695541.
3. MOHANAN NAIR, S/O.KRISHNA PILLAI,
KUNNATHUVILA VEEDU, NEAR VETTINAD MARKET, VEMBAYAM,
THIRUVANANTHAPURAM-695615

R1 BY STANDING COUNSEL SMT.K.S.SANTHI.

THIS ORIGINAL PETITION (MAC) HAVING BEEN FINALLY HEARD ON
20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.(MAC).No.5 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1:- TRUE COPY OF THE AWARD IN OPMV NO 363/2003 DTD 3/7/2009
PASSED BY THE MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL.
- EXT.P2:- TRUE COPY OF IA NO 2946/13 IN OPMV NO 363/2003 FILED BY
THE PETITIONER.
- EXT.P3:- TRUE COPY OF THE DRIVING LICENCE OF THE 2ND RESPONDENT.
- EXT.P4:- CERTIFIED COPY OF ORDER IN IA NO 2946/13 IN OPMV 363/2003
PASSED BY THE LEARNED TRIBUNAL DTD 15/10/2013.
- EXT.P5:- TRUE COPY OF THE NOTICE ISSUED BY THE DY TAHSILDAR,
REVENUE RECOVERY.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

(true copy)

K. Vinod Chandran, J

O.P.(MAC).No.5 of 2015-O

Dated this the 20th day of January, 2015

JUDGMENT

The petitioner is the registered owner of the vehicle which was involved in the accident, which led to the filing of O.P. (MV).No.363 of 2003, the award in which is produced as Exhibit P1. The petitioner and the driver were impleaded as parties, before the Motor Accidents Claims Tribunal, Attingal [for brevity “the Tribunal”]. Though notice was received, the petitioner is said to have entrusted the matter to an Advocate and thereafter not enquired about the same, since, according to the petitioner, the vehicle was covered by valid insurance policy and the driver too had a valid driving licence. Before the Tribunal, the Insurance Company raised a contention of violation of policy condition, that the driver had no valid driving licence on the date of accident. There was no contra evidence adduced and, therefore, the Tribunal went ahead and directed the Insurance Company to satisfy the award amounts; but permitted the Insurance Company to recover the amounts from the registered owner.

2. On execution proceedings being initiated, the petitioner woke up to his rights and approached the Tribunal with an application to set aside the *ex-parte* award as also seeking condonation of the delay of more than five years. The Tribunal condoned the delay; but, however, dismissed the application to set aside the *ex-parte* award on the ground that there were no sufficient reasons to permit setting aside of the *ex-parte* award; since the amounts awarded were deposited and disbursed and the Insurance Company was permitted to recover the amounts from the registered owner.

3. It is to be noticed that the insurance policy is admitted and the violation of policy condition alleged was in terms of the driver having not held a valid driving licence. A copy of the licence is seen produced as Exhibit P3, which *prima facie* shows that the driver was holding a valid driving licence at the time of the accident. However, this Court would not express anything on the validity of the same, finally, since it is for the Tribunal to permit evidence to be led and decide on the issue. In any circumstance, on the *prima facie* finding entered herein, this Court is of the opinion that Exhibit P4 can be set aside and O.P.(MV).363 of 2003 restored to file; however, only to the

extent of deciding the liability of the insurer/insured. Considering the long delay, the same can be allowed only on terms. The petitioner is directed to pay an amount of Rs.5,000/- [Rupees five thousand only] to the Kerala Mediation and Conciliation Centre, Ernakulam within a period of three weeks from the date of receipt of a certified copy of this judgment. On production of receipt for payment of costs, the Tribunal shall restore O.P.(MV).No.363 of 2003 to file and the award at Exhibit P1 shall stand set aside only to the extent of the liability mulcted on the registered owner. There shall be no necessity to issue notice to the claimant. The Insurance Company, the registered owner and if necessary, the driver shall be heard and the question of liability shall be considered afresh. The revenue recovery proceedings shall be kept in abeyance and shall be subject to the final orders to be passed by the Tribunal.

The Original Petition is disposed of as above.

Sd/-
K.Vinod Chandran,
Judge

vku/-

(true copy)