

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

O.P.(MAC).No.9 of 2015 (O)

I.A.NO.2745 OF 2012 IN O.P.(MV) NO.1452 OF 1995 OF THE
MOTOR ACCIDENTS CLAIMS TRIBUNAL, THALASSERY.

PETITIONER(S)/ RESPONDENTS:-

1. K.L.P. THUFAIL, AGED 35 YEARS, S/O.ABDURAHIMAN,
RESIDING AT VALAPATTANAM AMSOM,
KEERIYAD, KANNUR DISTRICT.
2. C. ANSARI,
CHAKKANTAVIDA HOUSE, NALUVAYAL.PO, KANNUR-670012.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
SRI.E.MOHAMMED SHAFI
SMT.GRACY POULOSE
SRI.C.H.ABDUL RASAC.

RESPONDENT(S)/ PETITIONERS:-

1. THE DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION, KANNUR-670002.
2. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
KANNUR-670002.
3. THE VILLAGE OFFICER,
KANNUR-I VILLAGE, KANNUR-670002.
4. V.V.LEELA, AGED 58 YEARS,
W/O.LATE JANARDHANAN.K.V.,
RESIDING AT KULANGARA HOUSE, PATTUVATHERU, CHIRAKKAL
KANNUR-670002.

5. K.V.VINOD, AGED 40 YEARS,
S/O.LATE JANARDHANAN, RESIDING AT KULANGARA HOUSE,
PATTUVATHERU, CHIRAKKAL, KANNUR-670011.

6. K.V.BINDHU, AGED 39 YEARS,
D/O.LATE JANARDHANAN, RESIDING AT KULANGARA HOUSE,
PATTUVATHERU, CHIRAKKAL, KANNUR-670011.

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.
R4 & R6 BY ADV. SRI.V.BINOY RAM.

THIS ORIGINAL PETITION (MAC) HAVING BEEN FINALLY HEARD ON
10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

O.P.(MAC).No.9 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 TRUE COPY OF THE I.A.2745/2012 IN OP(MV)1452/1995.
- EXT.P2 TRUE COPY OF THE COUNTER I.A.2745/2012 IN OP(MV)1452/1995.
- EXT.P3 TRUE COPY OF THE PETITION FOR FOR SET ASIDE THE *EX PARTE*
ORDER IN 5143/12.
- EXT.P4 TRUE COPY OF THE COUNTER IN I.A.5143/12 IN OP(MV)1452/1995.
- EXT.P5 TRUE COPY OF THE DEMAND NOTICE DATED 9.1.2015 ISSUED BY
THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/

[true copy]

K. Vinod Chandran, J.

O.P(MAC) No.9 of 2015-O

Dated this the 10th day of April, 2015

JUDGMENT

The petitioners are the owner and driver of a vehicle which was involved in an accident in which one Janardhanan K.V. was involved, whose wife and children are respondents 4 to 6. the said Janardhanan filed a claim before the Tribunal, which was allowed by award dated 12.04.2000. The injured is said to have died five years after the passing of the award. The legal heirs of the injured, being respondents 4 to 6, filed an execution petition, evidenced at Exhibit P1 on 07.04.2012, just prior to the expiry of twelve years.

2. When notice was received in the execution petition, the petitioners appeared before the Tribunal and contended that they are willing to settle the matter. However, no settlement having been reached, the legal heirs of the claimant having filed an application for issuance of revenue recovery proceedings, the same was allowed by order in I.A.No.2745 of 2012. The petitioners then filed an application for setting aside the *ex parte* award as per

Exhibit P3, which is said to have been dismissed and the order in which, it is submitted, has not been issued to the petitioners till date.

3. The petitioners contend that huge liability has been mulcted on them for reason of the long passage of time and also contend that the petitioners were willing to give double the amount as a settlement; but the respondents 4 to 6 did not agree to the same. The petitioners also contend that the escalation of amounts due are only by reason of the long delay in initiating execution proceedings and the interest having run for all the said years. The petitioners also submit that while they have made an application for certified copy of the order dismissing the application for setting aside the *ex parte* order, the revenue recovery proceedings were initiated.

4. The petitioners' contention with respect to delay cannot be countenanced, since the respondents 4 to 6 initiated the execution proceedings within the period of limitation. It is also pertinent that the petitioners did not appear before the Tribunal, despite notice being issued to them in the claim petition. If the petitioners had appeared and an order was passed against them, then they could have avoided the interest liability on deposit being

made before the Tribunal.

5. The learned counsel for the petitioners, on instruction, had raised a contention that the petitioners were not issued with a notice from the Tribunal. In such circumstance, this Court called for a report from the Tribunal, who has filed a report dated 09.04.2015. It is categorically stated that notice to respondents 1 and 2 were issued in O.P.(MV) No.1452 of 1995 and respondent No.2 was served notice on 19.09.1995 and he filed vakkalath and also written statement before the Tribunal. Respondent No.1, it is submitted, was not served with notice; but the Tribunal ordered notice by substituted service. Paper publication was made and was produced before the Tribunal. The Tribunal then took up the claim petition, called the name of respondent No.1 and set him *ex parte* on 09.10.1996. Hence, there can be no ground raised on no notice having been issued.

6. The delay caused in filing the execution petition cannot be raised against respondents 4 to 6, since the execution petition was filed within the limitation period. The interest liability was mulcted on the award amounts, only by reason of the default of the petitioners herein. The said respondents are admittedly the owner

and the driver of the vehicle which was involved in the motor accident and the vehicle had no valid insurance policy at the time of accident.

7. The contention of the petitioners that unusually exorbitant interest at the rate of 12% was mulcted on the award cannot be considered by this Court under Article 227 of the Constitution. Neither did the petitioner appear before the Tribunal nor has there been an appeal filed from the award of the Tribunal.

In the above circumstances, this Court is of the opinion that the Original Petition is devoid of merit. Accordingly, the Original Petition is dismissed. The amounts deposited by the petitioners as per the interim order of this Court shall be disbursed to respondents 4 to 6 forthwith, by the Tribunal. For the balance amounts, revenue recovery authorities would be entitled to proceed against the petitioners. Parties are left to suffer their respective costs.

Sd/-
K. Vinod Chandran,
Judge

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[true copy]