

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

OP (MAC).No. 19 of 2015 (O)

**OP(MV).NOS.134, 154 & 164/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
PATHANAMTHITTA.**
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PETITIONER:

**S.SREEKUMAR,
S/O.BALAKRISHNAN UNNITHAN,
NIRMALA BHAVAN, KOODAL VILLAGE,
KOODAL.P.O., ADOOR TALUK,.
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S):

- 1. THE BRANCH MANAGER,
ORIENTAL INSURANCE COMPANY LIMITED,
ULLOOR BRANCH, THIRUVANANTHAPURAM - 695 011.**
- 2. SHEEJA, PARAYANATHU VADAKKETHIL VEEDU,
MUNDAPPALLY MURI, PERINGANADU VILLAGE,
ADOOR TALUK - 691 528.**
- 3. LEELA, D/O.JANAKI, PLAVARA PADINJATTETHIL,
PERINGANADU VILLAGE, ADOOR TALUK - 691 528.**
- 4. LEELAMMA, D/O.MARY, SARATH BHAVAN,
THENGAMAM MURI, PALLICKAL VILLAGE,
ADOOR TALUK - 691 523.**
- 5. SPECIAL TAHSILDAR(RR), ADOOR TALUK,
ADOOR - 691 523.**
- 6. THE VILLAGE OFFICER, KOODAL - 689 693.**

**R5 & R6 BY SENIOR GOVT. PLEADER SRI.BIJU MEENATTOOR
R1 BY ADV. SMT.K.S.SANTHI**

**THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP (MAC).No. 19 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE DEMAND NOTICES ISSUED TO THE PETITIONER.

**EXHIBIT P2 : TRUE COPY OF THE AWARD IN OP(MV)NOS.134, 154 AND 164/07
PASSED BY THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
PATHANAMTHITTA.**

**EXHIBIT P3 : TRUE COPY OF THE RENEWED LICENCE ISSUED TO THE
PETITIONER'S DRIVER BIJU.V.**

EXHIBIT P4 : TRUE COPY OF THE JUDGMENT DATED 7.1.2014 IN WP(C).635/2014.

**EXHIBIT P5 : TRUE COPY OF THE COMMON ORDER DATED 31.10.2014 IN IA.570/14
AND 571/2014 OF THE MACT, PATHANAMTHITTA.**

RESPONDENT'S EXHIBITS: - NIL

/TRUE XOPY/

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.

O.P.(MAC) No. 19 of 2015

Dated this the 12th day of February, 2015

J U D G M E N T

The petitioner is the registered owner of the motor vehicle which was involved in an accident. Claim petitions were filed by three separate individuals in which an Award was passed as Ext.P2. The liability was mulcted on the petitioner, the registered owner, who was impleaded as the 2nd respondent therein. However, the Insurance Company was directed to pay the amounts to the claimants. The violation of policy conditions was found by the Tribunal on the ground that there is no valid driving license at the time of the accident, since it was not renewed.

2. The petitioner asserts that the driving license of the driver was renewed and has produced the renewed driving license at Ext.P3. *Prima facie*, this Court is satisfied that there has been a renewal of license and then there

would be no violation of the policy. However, that is a matter which ought to be considered by the Tribunal taken evidence. The above observation is only on a *prima facie* consideration.

3. The petitioner, in fact, had approached this Court earlier, when recovery proceedings were initiated and Ext.P4 judgment was passed, wherein coercive steps were kept in abeyance on condition of payment of an amount of Rs.25,000/- to the 1st respondent.

4. I have heard the learned Standing Counsel for the Insurance Company also. The Insurance Company admits that the amounts as per Ext.P4 was paid. Further, Ext.P4 directed that the Tribunal would consider the application for setting aside *ex parte* Award, after condoning the delay and the same was directed to be dealt with in accordance with law. The Tribunal has now dismissed the same as per Ext.P5.

5. Ext.P5 finds that there is absolutely no sustainable reason for condoning the delay. In fact, the petitioner had contended before the Tribunal that he had entrusted the case with a lawyer and the lawyer had failed to intimate the posting of the case. In any event, having found that *prima facie* the petitioner has a case to urge, it is only proper that the Tribunal consider the same on merits. However, that can only be on terms; of payment of Rs.2,000/-

6. Ext.P5 would be set aside on condition of payment of Rs.1,000/- (Rupees One thousand only) to the Kerala Mediation & Conciliation Centre and Rs.1,000/- (Rupees One thousand only) as cost to the Insurance Company. The petitioner is directed to pay the amounts within three weeks from today and produce memo before the Tribunal. On such condition being complied with, Ext.P5 would stand set aside. The Tribunal would set aside the Award only to the extent of deciding the liability of the insurer or the insured. No

notice need be issued to the claimants. The Tribunal shall, if required, after evidence, consider the question of liability specifically on the ground of violation of policy and decide upon the liability, to be either on the insured or the insurer. If the liability is mulcted on the Insurance Company, necessarily the amounts deposited with the Insurance Company as per Ext.P4 shall be refunded to the petitioner.

The Writ Petition stands allowed with the above observation. The recovery proceedings shall be kept in abeyance till final orders are passed by the Tribunal.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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