

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

OP (MAC).No. 21 of 2015 (O)

**AGAINST THE ORDER IN IA.2980/2014, IA.3854/2014, IA.3855/2014, IA.3895/2014,
MV O.P.NO.161/2009 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA**
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PETITIONER(S)/1ST RESPONDENT IN OP(MV):

**DASAN, S/O.NARAYANAN, AGED 59 YEARS,
AND RESIDING AT KOLLAMKUDY HOUSE,
CHOORAKODU KARA PATTIMATTOM VILLAGE,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.K.V.JAYACHANDRAN
SRI.RAJU V.MATHEW**

RESPONDENT(S)/PETITIONER & RESPONDENTS 2 AND 3:

- 1. KUNJUMON, S/O.PAPPU,
CHATTANCHIRAYIL HOUSE, PINDIMANA KARA,
PINDIMANA VILLAGE, KOTHAMANGALAM TALUK - 686 692.**
- 2. SIYAD, S/O.ALIYAR,
PARAMKUDY HOUSE, KAITHAKKADU KARA, PATTIMATTOM VILLAGE,
PATTIMATTOM P.O., KUNNATHUNADU TALUK - 683 562**
- 3. M/S.ICICI LAMBARD GENERAL INSURANCE, ZENITH HOUSE,
KESHAVARAO KHADE MARG, MAHALAXMI, MUMBAI - 400 001.**

R3 BY ADV. SRI.R.AJITH KUMAR

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

msv/

OP (MAC).No. 21 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE I.A.NO.2980/2014 FILED BY THE THIRD RESPONDENT.

EXT.P2 - COUNTER AFFIDAVIT TO EXT.P1 PETITION FILED BY PETITIONER.

EXT.P3 - TRUE COPY OF THE I.A.NO.3854/2014 FILED BY THE PETITIONER TO SET
ASIDE EXPARTY AWARD.

EXT.P4 - TRUE COPY OF THE I.A.3855/2014 FILED BY THE PETITIONER TO CONDONE
THE DELAY.

EXT.P5 - TRUE COPY OF THE I.A.NO.3895/2014 FILED BY THE PETITIONER TO STAY
THE PROCEEDINGS.

EXT.P6 - TRUE COPY OF THE ORDER IN I.A.NO.2980/2014 PASSED BY THE COURT
BELOW 25-11-2014.

EXT.P7 - TRUE COPY OF THE ORDER IN I.A.NO.3895/2014 PASSED BY THE COURT
BELOW ON 25-11-2014.

EXT.P8 - TRUE TYPED COPY OF THE ORDER PASSED BY THE COURT BELOW
ON 3-2-2015.

EXT.P9: TRUE COPY OF THE DRIVING LICENCE ISSUED IN FAVOUR OF
2ND RESPONDENT VALID FROM 22.7.2005 TO 21.7.2025.

EXT.P10: TRUE COPY OF THE CHARGE SHEET SENT ON 3.6.2008 AND MARKED AS
EXTA5 BEFORE THE COURT BELOW.

EXT.P11: TRUE COPY OF DRIVING LICENSE DETAILS OF 2ND RESPONDENT ISSUED
ON 12.9.2014 BY MVI PERUMBAVOOR.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. Vinod Chandran, J.

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O.P.(MACT)No.21 of 2015

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Dated this the 3rd day of March, 2015.

JUDGMENT

1. Petitioner, a registered owner of a vehicle, is aggrieved by the liability mulcted on him in a motor accident claim. The brief facts to be noticed are that; the accident occurred sometime in the year 2008 and the injured filed a claim, numbered as O.P.(MV)No.161 of 2009. Notice was issued to the registered owner, the driver and the Insurance Company. The registered owner and the driver failed to appear and hence, were declared ex-parte.
2. The Insurance Company raised a question of violation of policy condition, specifically that, the driver did not have a valid driving licence. The same was found, since the allegations remained uncontroverted and the insurer was absolved from the liability. However, the insurer paid the award amount and for recovery of the same from the petitioner/registered owner, the Tribunal issued a

recovery certificate.

3. Petitioner, the registered owner, then realized the liability cast on him and approached the Tribunal with an application to set aside the ex-parte award and condonation of delay of 445 days. Obviously, the petitioner woke up to his rights, only when, recovery was at his door-steps. The Insurance Company is said to have paid the entire amount to the claimants. The Tribunal, by Ext.P8, dismissed all the applications filed by the registered owner.
4. Petitioner herein has produced Ext.P9, copy of the driving licence, along with the reply affidavit. This Court, would not say anything on the validity, at this point of time. However, since, *prima facie*, the driver is said to hold a valid driving licence, it is only proper that the question of liability be considered afresh by the Tribunal. The Insurance Company has to be compensated and such consideration would only be, on the petitioner paying an amount of Rs.5,000/- to the third respondent as cost, within a period of one month from today. On the petitioner producing evidence of payment of cost, the

Tribunal shall restore the case to its files, only to the extent of consideration of the liability as against the insurer and the insured. It is made clear that, no notice need be issued to the claimants.

5. To facilitate such consideration, Exts.P6 and P7 are set aside. The Tribunal shall consider the application and set aside the award, only to the extent of the liability being mulcted on the petitioner. Petitioner shall be permitted to adduce evidence on that count and the Tribunal shall consider the validity of the driving licence *de hors* any observations made herein. Petitioner and the Insurance Company to appear before the Tribunal on 6.4.2015. The matter shall be considered and final orders passed, within a period of three months from the date of appearance of the petitioner and the Insurance Company. The recovery shall be kept in abeyance till then and later shall be governed by the orders passed by the Tribunal.

Original petition is disposed off.

K. Vinod Chandran, Judge.

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