

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

OP (MAC).No. 35 of 2015 (0)

OPMV 12/2004 of MACT,KALPETTA, WAYANAD

PETITIONER(S):

MUSTAFA AGED 36 YEARS, S/O KUNJIPOKKU,
VADAKKEDAN HOUSE, AMBALAVAYAL AMSOM, ANAPPARA,
SULTHAN BATHERY TALUK, WAYANAD DIST.

BY ADV. SMT.S.L.SYLAJA

RESPONDENT(S):

1. T.K.SULAIMAN, AGED 35 YEARS, S/O KUNJALAVI,
THANNIKKADAN HOUSE, CHULLIYODE PO.,
SULTHAN BATHERY TALUK, WAYANAD DIST.- 679332
2. ABDUL MAJEED, AGED 38 YEARS, S/O ABDUL RAHIMAN,
PADIKKAMNNIL HOUSE, AMBALAVAYAL AMSOM,
KARADIPPARA POST, SULTHAN BATHERY TALUK,
WAYANAD DIST.- 673593
3. THE BRANCH MANAGER, NEW INDIA ASSURANCE CO. LTD.,
TRIPURI BUILDING, EAST NADAKKAVU,
CALICUT BRANCH - 673001
4. SAJNA AGED 30 YEARS, W/O LATE MAJEED
EDACKUDI VEEDU, PANAMARAM PO., MANANTHAVADY TALUK,
WAYANAD DISTRICT - 670721
5. NIHALA JASMIN, AGED 12 YEARS,
D/O LATE MAJEED, EDACKUDI VEEDU, PANAMARAM PO.,
MANANTHAVADY TALUK, WAYANAD DISTRICT - 670721
6. MUSTHAF, AGED 9 YEARS, S/O LATE MAJEED,
EDACKUDI VEEDU, PANAMARAM PO.,
MANANTHAVADY TALUK, WAYANAD DISTRICT - 670721

OP (MAC).No. 35 of 2015 (0)

-2-

7. KHADEEJA, AGED 68 YEARS, MOTHER OF LATER MAJEED,
PADICKAMNNIL HOUSE, KARADIPPARA PO.,
AMBALAVAYAL, SULTHAN BATHERY TALUK,
WAYANAD DISTRICT, - 673593

R BY SRI.A.A.ZIYAD RAHMAN

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 20-03-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (MAC).No. 35 of 2015 (0)

APPENDIX

EXHIBITS

P1- TRUE COPY OF THE AWARD DATED 15.10.08 IN OP(MV).12/2004 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, (KALPETTA)

P2- TRUE COPY OF THE INSURANCE POLICY OF THE VEHICLE

P3- TRUE COPY OF THE EXECUTION PETITION DATED 20.6.2013 MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD (KALPETTA) FILED AS E.P.96/2013

P4- TRUE COPY OF THE DELAY PETITION DATED 24.10.2013 FILED BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, (KALPETTA) AS I.A.2888/2013

P5- TRUE COPY OF THE PETITION FOR SETTING ASIDE EXPARTE DATED 24.10.2013 FILED BEFORE THE MACT, WAYANAD, KALPETTA AS I.A.2889 OF 2013

P6- TRUE COPY OF THE OBJECTION DATED 18.2.2014 FILED BY R3 IN I.A.2888/2013

P7- CERTIFIED COPY OF THE COMMON ORDER DATED 3.6.2014 IN I.A.2888 OF 2013 AND 2889 OF 2013

//True Copy//

P.S. To Judge

K.VINOD CHANDRAN, J

OP(MAC). 35 of 2015

Dated 20th March, 2015

JUDGMENT

The petitioner is the registered owner of a vehicle which was involved in an accident on 03.12.2002. One Sulaiman was injured in the accident and he filed a Claim Petition as OP (MV).12 of 2004 before the Motor Accidents Claims Tribunal, Kalpetta and an Award was passed on 15.10.2008. The petitioner who was the owner of the vehicle did not appear before the Tribunal despite notice. The petitioner hence was set *ex parte* and an Award was passed mulcting the liability on the registered owner and completely exonerating the Insurance Company for reason of the policy taken out being an 'Act Only policy' and the claimant being a pillion rider.

2. The contention raised by the

petitioner herein is that Ext.P2 is not an 'Act Only policy' and there is additional amounts deposited as premium which would cover the pillion rider also. That, however, would be an issue to be considered before the appropriate forum.

3. The petitioner has now filed an application to set aside the *ex parte* decree with a delay of 1835 days. The same was dismissed by Ext.P7 finding that there is no reason to condone the delay or to set aside the *ex parte* order. This Court does not find any reason to interfere with the said order; however considering the fact that the issue raised is only with respect to the liability and if there is an insurance policy in existence which is not an 'Act Only policy', it is only appropriate that the issue be considered afresh by the Tribunal. But, that can only be on terms.

4. In the above circumstances, Ext.P7 would stand set aside only on condition of the petitioner paying cost of Rs.5000/- to the Insurance Company and also depositing the entire amounts due as per the Award with interest up-to-date, before the Tribunal, within a period of two months from today. On such deposit being made, same shall be disbursed to the claimants. On such condition being complied with, Exts.P4 and P5 would stand allowed; however only to the extent of setting aside the *ex parte* Award on the question of liability mulcted on the petitioner, in paying the Award amounts. There is no requirement for the claimant to be participated in such enquiry. The petitioner shall be granted sufficient opportunity to adduce evidence and the Insurance Company to counter the same. The issue to be considered is only with respect to the liability. If liability

is found to be on the Insurance Company, the Insurance Company shall deposit the entire amount due as per the Award with interest due only upto 15.10.2008, ie, the date of Award. The balance interest would be the liability of the petitioner himself, since it was for his default that the *ex parte* Award was passed and there was considerable delay in approaching the Tribunal for setting aside the *ex parte* Award. Parties shall appear before the MACT, Kalpetta on 27.04.2015. If the conditions aforesaid are not complied with, then definitely Ext.P7 would stand revived.

The Original Petition is disposed of.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

//True Copy//