

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

OP (MAC).No. 51 of 2015 (O)

PETITIONER:

ANILKUMAR AGED 50 YEARS, S/O. VASUDEVAN, PANOOR PADINJETTATHIL
HOUSE, PANMANAKKARA VILLAGE, KARUNAGAPPILLY TALUK,
KOLLAM DISTRICT

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO

RESPONDENTS:

1. BEENA AGED 50, W/O. SURENDRANATH,
THAIVALAPPIL HOUSE, RAPPINIVATTOM VILLAGE,
KODUNGALLORE TALUK, THRISSUR DISTRICT 680 001
2. ASHRAF, S/O.KUNJUMHAMMED, ALANKARATHUPARAMBIL HOUSE
KOMBANATTUADAVU DESWOM, PUTHENCHIRA VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT 680 001
3. NATIONAL INSURANCE CO LTD, PARAMESWARAM PILLAI BAVAN,
HOSPITAL ROAD, KOLLAM 680 001

R3 BY SRI.M.A.GEORGE, SC NATIONAL INSURANCE CO.

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 10-04-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

OPMAC NO.51 OF 2015

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: TRUE COPY OF AWARD PASSED BY THE MACT, IRINJALAKUDA DT 7.12.2009

EXT.P2: TRUE COPY OF THE SALE AGREEMENT DT 17.07.2004 EXECUTED BETWEEN
PETITIONER AND AFSAL

EXT.P3: TRUE COPY OF THE RC PARTICULARS OF VEHICLE NO. KL 02 J 1683 FROM RTO
OFFICE KOLLAM DT 16.01.2015

EXT.P4: TRUE COPY OF IA 1014/2012 OP (MV)633/2006 PETITION TO SET ASIDE BEFORE
THE MACT, IRINJALAKUDA DT 7.6.2013

EXT.P5: TRUE COPY OF THE ORDER IN IA 1014/2012 OP(MV)633/2006 BEFORE THE MACT,
IRINJALAKUDA DT 7.6.2013

EXT.P6: TRUE COPY OF THE ORDER IN IA 1014/2012 BEFORE THE MACT IRINJALAKUDA
DT 16.08.2013

EXT.P7: TRUE COPY OF IA 90/2012 PETITION TO REVIEW THE CONDITIONAL ORDER
BEFORE THE MACT, IRINJALAKUDA

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

O.P(MAC) No.51 of 2015

Dated this the 10th day of April, 2015

J U D G M E N T

The petitioner is aggrieved with the order passed at Ext.P5 wherein an application to set aside the ex-parte award was allowed on condition of deposit of ½ of the award amounts as security within one month from 07.06.2013. The review filed was also dismissed by an order dated 16.08.2013 which was dismissed for reason of the deposit having not been made. There was an application for restoration filed at Ext.P7; that is also dismissed for default, is the submission made by the learned counsel for the petitioner.

2. The petitioner is aggrieved by the non-consideration of the petitioner's claim which the petitioner alleges is that, the petitioner had transferred the vehicle long before the accident.

3. It is to be noticed that Ext.P1 award was passed on 07.12.2009. In Ext.P1 award, the petitioner is impleaded as the first

respondent and it is clearly stated by the Tribunal that “respondents 1 and 2 remains ex-parte in the proceedings”. Hence, the contention of the petitioner that he was not issued with notice in the claim petition cannot be countenanced. The petitioner's counsel contends that in execution, the notice was taken out in another address. In any event, that is not sufficient to find that the petitioner had not received the notice purportedly issued by the Tribunal in the claim petition.

4. Even otherwise, it is to be noticed that the petitioner on being informed of the award passed was before the Tribunal with an application to set aside the award. The same was allowed by the Tribunal by Ext.P5 at 7.6.2013 directing the petitioner to deposit $\frac{1}{2}$ of the award amounts as security within one month from that date. The petitioner, neither deposited the amounts nor challenged Ext.P5 order. The matter was taken up in a review on 16.08.2013 after around two months when the tribunal dismissed the I.A on the ground that the condition in Ext.P5 order was not satisfied. The petitioner again was before the Tribunal seeking restoration of the

same by Ext.P7 on 07.01.2014 after about five months, which also is stated to be dismissed on default for non appearance of the petitioner or his counsel. The said order has been produced along with an I.A.

5. In such circumstance, the petitioner is found to be guilty of gross negligence in prosecuting the matter. It has to be found that there was no diligent prosecution as asserted by the petitioner since after Ext.P5 the I.A itself was dismissed for non compliance of the condition and neither the condition imposed nor dismissal was challenged. A delayed application for considering the matter afresh also is said to have been dismissed for default. In such circumstance, this Court is not inclined to exercise the supervisory jurisdiction to interfere with any of the orders passed by the Tribunal.

Writ petition stands dismissed.

Sd/-
(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge