

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

OP (MAC).No. 58 of 2015 (O)

**I.A. NOS.1526/2011 AND 1527/2011 IN OP(MV) NO.677/2010 OF MOTOR
ACCIDENTS CLAIMS TRIBUNAL, TIRUR.**

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PETITIONER(S):

**1. M.T. MADHAVIKUTTY,
W/O.SHANMUGADASAN PILLAI,
MATHILAKATH THAZHATHETHIL VEEDU,
KOLOLOMBA, PONNANI TALUK,
MALAPPURAM DISTRICT.**

**2. M.S. MADHU,
S/O.SHANMUGADASAN PILLAI,
MATHILAKATH THAZHATHETHIL VEEDU,
KOLOLOMBA, PONNANI TALUK,
MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR.

RESPONDENT(S):

**1. VINOD KUMAR, S/O.GOPALAN M.K.,
MOONNUKUDIYIL VEEDU, ANAKKARA P.O.,
PALAKKAD DISTRICT-679 551.**

**2. SANTHOSH K.,
S/O.CHANDRAN, KUTTATHEL HOUSE,
SUKAPURAM P.O., EDAPPAL, PONNANI TALUK,
MALAPPURAM DISTRICT-679 576.**

**3. ROYAL SUNDARAM ALLIANCE COMPANY LTD.,
SUNDARAM TOWERS, 45 & 46, WHITE ROAD,
CHENNAI-600 014.**

**4. M.S. SHAJU, S/O.SHANMUGADASAN PILLAI,
MATHILAKATH THAZHATHETHIL VEEDU,
KOLOLOMBA, PONNANI TALUK,
MALAPPURAM DISTRICT, PIN-679 576.**

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**5. M.S. BINU, S/O.SHANMUGADASAN PILLAI,
MATHILAKATH THAZHATHETHIL VEEDU,
KOLOLOMBA, PONNANI TALUK,
MALAPPURAM DISTRICT, PIN-679 576.**

**R3 BY SRI.MATHEWS JACOB, SENIOR ADVOCATE.
ADVS. SRI.P.JACOB MATHEW,
SMT.PREETHY R. NAIR.**

**THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 06-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

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APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1. TRUE COPY OF THE APPLICATION FILED BY THE PETITIONERS BEFORE THE MACT, TIRUR DATED 02/09/2010.
- EXT.P2. TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONERS IN IA NO.1527/2011 IN OP(MV) NO.677/2010 OF THE MACT, TIRUR.
- EXT.P3. TRUE COPY OF THE COMMON ORDER PASSED BY THE MACT, TIRUR IN IA NO.1526/2011 AND IA. 1527/2011 IN OP(MV) NO.677/2010 DATED 15/03/2013.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

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O.P(MAC) No.58 of 2015

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Dated this the 6th day of July, 2015

JUDGMENT

Ext.P3 order by which the petitioners' application under Order 9 Rule 9 CPC to restore the claim petition to file and the application under Section 5 of the Limitation Act to condone the delay in filing the restoration application were rejected, is under challenge.

2. The petitioners and respondents 4 and 5 are the legal heirs of one Shanmugadasan Pillai, who died in a motor accident. The petitioners filed O.P (MV) No.677 of 2010 before the Motor Accidents Claims Tribunal, Tirur for getting compensation for the accidental death of the late husband of the first petitioner and the late father of the second petitioner. The respondents 4 and 5 were abroad at the time of filing of the original petition.

3. The first petitioner is aged and ailing lady and she was laid up. When the case was called, the first petitioner, who was conducting the case was absent as she was not informed regarding the posting of the case. The counsel for the petitioners had entrusted the matter with another lawyer who omitted to represent the matter. The case was dismissed for default.

4. The petitioners filed Ext.P2 application before the learned Tribunal for restoration of the claim petition as I.A No.1527 of 2011 and also an application for condonation of delay as I.A No.1526 of 2011. However, the Tribunal by Ext.P3 order dismissed both the applications by a common order and the same has resulted in denial of compensation to the petitioners. It is with this background, the original petition is filed.

5. I have heard the learned counsel for the petitioners and the learned standing counsel for the insurance company.

6. The learned standing counsel for the insurance company would submit that there is inordinate delay in filing the petitions. However, it is an admitted fact that the first petitioner is more than 70 years old and the petitioners' approached the Tribunal claiming compensation for the death of the first petitioner's husband. The case happened to be dismissed for default as the first petitioner was laid up and the second petitioner was far way in connection with his employment and, therefore, could not appear before the Tribunal.

7. It is crucial to note that none of the respondents filed objection to the applications. It is true that though the case stood posted for settlement, the same could not be settled due to the absence of the petitioners and their counsel. The continuous absence of the petitioner is cited as the reason by

the learned Tribunal for dismissing the applications. Though it is a genuine reason to dismiss the application, considering the circumstances pointed out by the petitioners for their absence, this Court is of the view that it is only just and proper to grant one more opportunity to the petitioners to contest their case on merits.

Therefore, this original petition is allowed. The impugned order is set aside. I.A Nos.1526 and 1527 of 2011 in O.P(MV) No.677 of 2010 on the files of Motor Accidents Claims Tribunal, Tirur are allowed condoning the delay in filing the restoration application and restoring the original petition back to file. Parties shall mark appearance before the learned Tribunal on 1.8.2015. The learned Tribunal shall provide an opportunity to the petitioners to adduce evidence and also try for a settlement if possible. Thereafter final verdict shall be given in accordance with law.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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