

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

OP (MAC).No. 60 of 2015 (O)

**I.A.NO.3935/2014, I.A.NO.3936/2014 IN O.P(M.V)NO.27/2007 OF MOTOR
ACCIDENTS CLAIMS TRIBUNAL, OTTAPALAM**

PETITIONER(S) :

**MUHAMMED PANDIKASALA, AGED 48 YEARS,
S/O.ALIKUTTY, PANDIKASALA HOUSE, KALLIKKOLKUNDU,
KADAPADY, PERAVALLUR, TIRURANGADI,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH**

RESPONDENT(S) :

**THE NEW INDIA ASSURANCE COMPANY LTD.,
SHAFEER COMPLEX, OPP: YWCA, KANNUR ROAD,
KOZHIKODE, PIN-673 001.**

**BY ADVS. SRI.V.P.K.PANICKER
SRI.A.A.ZIYAD RAHMAN**

**THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 30-11-2015,
ALONG WITH OP (MAC).No.61 OF 2015 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP (MAC).No. 60 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE COMMON JUDGMENT IN O.P.(M.V)NO.27/2007
& CONNECTED CASES OF THE M.A.C.T., OTTAPALAM
DATED 10-05-2010.**

**EXHIBIT P2: TRUE COPY OF THE COMMON ORDER IN I.A.NO. 3935/2014 AND
I.A.NO. 3936/2014 IN O.P.(M.V)NO. 27/2007 AND CONNECTED CASES
DATED, 01-04-2015.**

**EXHIBIT P3: TRUE COPY OF THE PARTICULARS OF LICENSE OF
THE PETITIONER ISSUED BY THE MOTOR VEHICLE INSPECTOR,
PATTAMBI, DATED 23-11-2013.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

P.B.SURESH KUMAR, J.

**O.P.(MAC) Nos.60, 61, 62, 63, 64,
65, 66, 67, 69, 70, 71, 72,
73, 74, 75 & 76 of 2015**

Dated 30th November, 2015.

J U D G M E N T

The petitioner in these original petitions is the driver of a vehicle involved in an accident, which was the subject matter of 16 claim petitions before the Motor Accidents Claims Tribunal.

2. The accident occurred on account of the collision of two stage carriages bearing registration Nos.KL-10/C-4482 and KL-9/A-7623. The petitioner was the driver of the stage carriage bearing registration No.KL-10/C-4482. He was a common respondent in all the claim petitions. Likewise, the owner of the said vehicle as also its insurer were common respondents in the claim petitions. The petitioner was set ex parte in the claim petitions as he did not appear before the Tribunal on receipt of notice. The insurer of the vehicle driven

by the petitioner was the insurer of the other vehicle involved in the accident also. Though the insurer of the vehicles admitted the existence of the insurance coverage for both the vehicles, it was contended by them that the petitioner who was negligent in causing the accident was not holding a valid driving licence at the time of accident and therefore, they are entitled to recover the compensation, if found payable, to the claimants from him. The Tribunal found that the accident occurred on account of the negligence of the petitioner. In the absence of contest on the side of the petitioner, the Tribunal also found that the petitioner was not holding a driving licence at the time of accident. Consequently, while permitting the claimants to recover the compensation from the insurer, the Tribunal, as per the common award passed in the claim petitions, permitted the insurer to recover the compensation directed to be paid to the claimants from the petitioner.

3. The common award referred to above was passed by the Tribunal during May, 2010. During 2014, the petitioner filed applications in all the claim petitions seeking orders to set

aside the ex parte award passed against him. Applications were also filed by the petitioner seeking orders to condone the delay in filing the applications to set aside the ex parte common award passed against him. The stand taken by the petitioner in the said applications is that on receipt of notices in the claim petitions, he entrusted his vakkalath and relevant documents to the owner of the vehicle to make necessary arrangements for defending the claim petitions on his behalf also and that he came to know of the common award passed in the claim petitions only when he received notice in the review petition filed by the owner seeking review of the common award. The applications filed in the claim petitions seeking orders to condone the delay in setting aside the ex parte common award as also the applications filed in the claim petitions seeking orders to set aside the ex parte common award were, however, dismissed by the Tribunal as per Ext.P2 common order. Ext.P2 order is under challenge in these original petitions.

4. Heard the learned counsel for the petitioner as

also the learned counsel for the respondent.

5. A perusal of Ext.P2 common order indicates that the applications referred to above were not considered by the Tribunal on merits. Instead, the applications were dismissed on the ground that even if the applications are allowed, no purpose will be served. It is seen that the counsel for the petitioner conceded before the Tribunal at the time of hearing that the petitioner was not having a driving licence at the time of accident and it is on account of the aforesaid incorrect concession made by the counsel for the petitioner, the Tribunal took the view that even if the petitions are allowed, no purpose will be served.

6. In these original petitions, the petitioner has produced his driving licence particulars as Ext.P3. Ext.P3 indicates that the petitioner was having a valid driving licence for the period from 25.9.1999 to 13.5.2018. The accident took place on 28.3.2006. As such, the fact that the petitioner was holding a licence to drive the vehicle involved in the accident at the time of accident, cannot be disputed. Ext.P3, however,

indicates that the petitioner had the requisite badge to drive the transport vehicle involved in the accident only from 18.7.2006. In other words, the petitioner was not having the badge required for driving the transport vehicle involved in the accident as on the date of accident. In **National Insurance Company Ltd. v. Jisha** (2015(1) KLT 1), a Full Bench of this Court held that want of badge is not a ground to absolve the insurer from the liability to indemnify the owner of the vehicle covered by an insurance policy. In so far as the petitioner was holding a valid driving licence at the time of accident, in the light of the Full Bench decision of this Court referred to above, the insurer of the vehicle was bound to indemnify the owner of the vehicle as per the terms of the insurance policy issued to him. As such, if the Tribunal had set aside the ex parte common award passed against the petitioner as requested for by the petitioner, the petitioner would have been absolved from the liability to reimburse the compensation to the insurer. In the said view of the matter, the dismissal of the applications filed by the petitioner referred to above on the ground that no

purpose will be served by allowing the applications, is unsustainable.

7. As noticed above, the specific case of the petitioner in the affidavit filed in support of the applications to set aside the ex parte common award as also to condone the delay in filing the applications to set aside the ex parte common award is that on receipt of the notices in the claim petitions, he entrusted the vakkalath and other relevant documents to the owner of the vehicle to defend the claim petitions on his behalf also and that it is on account of the said reason that he did not appear in the claim petitions. The petitioner being the driver of the vehicle involved in the accident, the case set up by him in the affidavit filed in support of the applications cannot be said to be improbable, for, normally, claim petitions are defended by the owners of the concerned vehicles. As such, according to me, the Tribunal ought to have allowed the applications filed by the petitioner and decided the claim petitions afresh at least as regards the liability of the petitioner to reimburse the compensation to the

insurer. Ext.P2 common order, in the circumstances, is liable to be interfered with.

In the result, Ext.P2 common order passed in the claim petitions is set aside, the interlocutory applications filed by the petitioner in all the claim petitions seeking orders to set aside the ex parte common award as also to condone the delay in filing the applications to set aside the ex parte common award are allowed, and the ex parte common award to the extent the same permits the insurer of the vehicle to recover from the petitioner the compensation directed to be paid to the claimants is set aside. The Tribunal is directed to reconsider the issue relating to the liability of the petitioner to reimburse the insurer the compensation paid to the claimants afresh in the light of the decision of this Court in **National Insurance Company Ltd. v. Jisha** (supra). Since the award in favour of the claimants is not interfered with, notice of the further proceedings before the Tribunal need not be issued to the claimants.

The original petitions are allowed as above. All the interlocutory applications in the original petitions are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)