

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

OP (MAC).No. 82 of 2015 (O)

**OP(MV)NO.526/2013 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL COURT,
THODUPUZHA.**
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PETITIONER:

**ANILKUMAR, S/O. SANKARAPILLAI,
THACHUKUZHAYIL HOUSE,
MUTHALIYAR MADOM BHAGOM KATIKODE VILLAGE,
THODUPUZHA EAST P.O.**

**BY ADVS.SRI.T.P.PRADEEP
SRI.V.SUMESH**

RESPONDENT(S):

- 1. JABBAR @ UDUPPIL JABBAR, S/O. KANI,
CHERUMCHUVATTIL HOUSE, KKP COLONY BHAGOM,
EDAVETTY KARA, KARIKODE VILLAGE - 685 588.**
- 2. UNITED INDIA INSURANCE COMPANY LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
THODUPUZHA - 685 584.**
- 3. GEORGE, S/O. PAULY, CHOORAKKOOTTIL HOUSE,
NJARAKKUTTI BHAGOM, EZHUMUTTAM KARA,
KARIMANNOOR VILLAGE, PIN - 685 584.**
- 4. ALICE GEORGE, W/O. GEORGE,
CHOORAKKOOTTIL HOUSE, NJARAKUTTI BHAGOM,
EZHUMUTTAM KARA, KARIMANNOOR VILLAGE, PIN - 685 581.**

**R2 BY ADV. SRI.P.JAYASANKAR
R2 BY ADV. JOHN JOSEPH VETTICAD(BY ORDER)**

**THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 28-07-2015 ,
THE COURT ON 07-10-2015 DELIVERED THE FOLLOWING:**

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OP (MAC).No. 82 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS :

- P1 - TRUE COPY OF THE CLAIM PETITION IN OPMV NO. 526/2013.
- P2- TRUE COPY OF THE AWARD DT. 21.7.14 OF THE MACT TRIBUNAL, THODUPUZHA.
- P3 - TRUE COPY OF THE PETITION FILED AS IA 1863/2014.
- P4 - TRUE COPY OF THE PETITION FILED AS IA 1862/2014.
- P5 - TRUE COPY OF THE OBJECTION IN IA NO. 1862/2014 FILED BY THE INSURANCE COMPANY.
- P6 - TRUE COPY OF THE OBJECTION IN IA NO. 1863/2014 FILED BY THE INSURANCE COMPANY.
- P7 - TRUE COPY OF THE OBJECTION FILED BY THE CLAIMANTS AGAINST THE IA NO. 1863/2014 DATED 11.1.2014.
- P8 - TRUE COPY OF THE JUDGMENT DT. 26.3.15 IN CC NO. 87/2013.
- P9 - TRUE COPY OF THE ORDER DT. 02.5.15 IN IA NO. 1862/2014.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V.RAMAKRISHNA PILLAI, J.

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O.P(MAC) No.82 of 2015

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Dated this the 7th day of October, 2015

JUDGMENT

The petitioner is challenging Ext.P9 order dated 2.5.2015 passed by the Motor Accidents Claims Tribunal, Thodupuzha on an application for restoration filed by the petitioner in O.P(MV) No.526 of 2013 to the extent the learned Tribunal imposed a condition to furnish a security bond for ₹6 lakhs with two solvent sureties having properties and to produce original title deeds before 14.5.2015.

2. Respondents 3 and 4 herein filed the original petition before the MACT for a sum of ₹6 lakhs as compensation towards the death of their son Akhil George, aged 12 years. The petitioner herein was the second respondent as he was the registered owner of the vehicle involved in the accident. The vehicle was driven by the first respondent herein. The offending vehicle was insured with the second respondent insurance company.

3. The claim petition was allowed on 21.7.2014 awarding an amount of ₹5 lakhs as compensation. However, the second respondent insurance company was permitted to recover the amount from the petitioner, who was the registered owner, on the

ground that the first respondent who was driving the vehicle was not having valid driving licence at the time of the accident.

4. The petitioner, who was the second respondent, was declared *ex parte* along with the first respondent. Knowing the award, the petitioner filed I.A No.1863 of 2014 to set aside the *ex parte* decree along with I.A No.862 of 2014 for condoning the delay of 34 days in filing the aforesaid petition. The Tribunal allowed the petition for condonation of the delay and set aside the *ex parte* order imposing a condition to provide security for ₹6 lakhs with two solvent sureties along with properties and to produce the title deeds before 14.5.2015. According to the petitioner, he was prevented by sufficient reasons for not appearing before the Tribunal on the date of hearing. According to the petitioner, the condition imposed by the learned Tribunal is unnecessary as the vehicle is covered by a valid policy on the date of the accident and the first respondent, who was driving the vehicle, was holding a valid driving licence. Therefore, according to petitioner, if an opportunity is provided, the petitioner would be able to prove his case

5. Arguments have been heard.

6. According to the learned counsel for the petitioner, the reasons pointed out by the petitioner to set aside the award was

reasonable as the wife of the learned counsel appearing for the petitioner before the Tribunal was seriously ill and, therefore, the learned counsel was prevented by sufficient cause from appearing on the dates of posting. It was pointed out that no prejudice would be caused to any one in allowing the petition as the vehicle was having all the valid documents.

7. As the petitioner, who is the registered owner of the vehicle, is only aggrieved regarding the permission granted to the second respondent insurance company to recover the sum, as allegedly the vehicle was being driven by a licensed person, this Court is of the view that it is only just and proper to allow the petitioner to contest the case to the limited purpose of producing the policy, since there cannot be any dispute regarding the quantum of compensation arrived at.

Therefore, this original petition is allowed quashing the condition in Ext.P9 to the extent it directs the petitioner to furnish security bond of ₹6 lakhs with two solvent sureties having landed properties. The parties shall mark appearance before the Motor Accidents Claims Tribunal on 2.11.2015. The learned Tribunal shall provide the petitioner an opportunity to produce the driving licence. In the event of producing the same, the learned Tribunal shall

reconsider the direction in the award granting the recovery right to the second respondent insurance company.

It is hereby made clear that the petitioner shall not have any right to re-agitate the quantum of compensation already arrived at. The entire exercise shall be completed by the learned Tribunal, within a period of one month from the date of appearance of the parties before the Tribunal.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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