

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937**

**OP (MAC).No. 86 of 2015**  
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**OP(MV).NO.586/2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD**  
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**PETITIONER/PETITIONER(S)/1ST RESPONDENT:**  
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**CHACKO, AGED 53 YEARS,  
S/O MATHAI, AMBALAPADATH HOUSE, KARUVARAKUNDU,  
AMBALAPADAM, NILAMBUR, PALAKKAD DISTRICT.**

**BY ADV. SRI.ALIAS M.CHERIAN**

**RESPONDENT(S)/RESPONDENTS/CLAIMANTS & RESPONDENTS 2 & 3:**  
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- 1. KANAKAM, W/O MANIKANDAN, AGED 31 YEARS,  
RESIDING AT NALUCENT COLONY, KARUVATTA, ERATTAKULAM,  
ALATHUR TALUK, PALAKKAD DISTRICT-678 622.**
- 2. SURIYAN (MINOR), AGED 10 YEARS, S/O MANIKANDAN,  
RESIDING AT NALUCENT COLONY, KARUVATTA, ERATTAKULAM  
ALATHUR TALUK, PALAKKAD DIST  
REPRESENTED BY THE NEXT FRIEND & MOTHER KANAKAM,  
(1ST RESPONDENT HEREIN)-678 622.**
- 3. SUNITHA (MINOR), D/O MANIKANDAN, AGED 8 YEARS,  
DATED OF BIRTH IS 27/4/2007,  
RESIDING AT NALUCENT COLONY, KARUVATTA, ERATTAKULAM  
ALATHUR TALUK,  
PALAKKAD DIST REPRESENTED BY THE NEXT  
FRIEND & MOTHER KANAKAM  
(1ST RESPONDENT HEREIN)-678 622.**
- 4. SURENDRAN (MINOR), AGED 6 YEARS, S/O MANIKANDAN,  
RESIDING AT NALUCENT COLONY, KARUVATTA, ERATTAKULAM  
ALATHUR TALUK, PALAKKAD DIST REPRESENTED BY THE NEXT  
FRIEND & MOTHER KANAKAM,  
(1ST RESPONDENT HEREIN)-678 622.**

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5. SUNDARAN, AGED 65 YEARS, S/O BALAKRISHANAN,  
RESIDING AT NALUCENT COLONY, KARUVATTA, ERATTAKULAM,  
ALATHUR TALUK, PALAKKAD DISTRICT -678 622.

6. BABU, AGED 37 YEARS,  
S/O KRISHNANKTTY, ANCHUVELLAKKAD, KANNIMARI  
CHITTUR TALUK, PALAKKAD DISTRICT- 678 101.

7. THE NEW INDIA ASSURANCE COMPANY LIMITED,  
NILAMBUR ROAD, MANJERI,  
PALAKKAD DISTRICT,  
REPRESENTED BY ITS BRANCH MANAGER -678 001.

BY SRI.A.A.ZIYAD RAHMAN

THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 03-07-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXT.P1: TRUE COPY OF CLAIM PETITION IN OP M.V. NO. 586/2009**
- EXT.P2: TRUE COPY OF AWARD DATED 3/9/2012 CLAIM PETITION ON  
O.P.M.V.NO. 586/2009**
- EXT.P3: TRUE COPY OF AGREEMENT DATED 31/10/2015**
- EXT.P4; TRUE COPY OF PETITION I.A.NO. 1210/2014**
- EXT.P5: TRUE COPY OF PETITION I.A.1211/2014**
- EXT.P6: CERTIFIED COPY OF COMMON ORDER 22/11/2014 IN O.P. (M.V) NO.  
586/2009**

**RESPONDENT(S)' EXHIBITS**  
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**NIL.**

**/ TRUE COPY /**

**P.S. TO JUDGE**

**PJ**

**A.V.RAMAKRISHNA PILLAI, J.**

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O.P(MAC) No.86 of 2015

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Dated this the 3<sup>rd</sup> day of July, 2015

**JUDGMENT**

Aggrieved by the dismissal of the petition to set aside the *ex parte* award and the petition to condone the delay passed by the Motor Accidents Claims Tribunal, Palakkad, the petitioner has come up before this Court.

2. The petitioner was the first respondent in a motor accident claim petition. He was the registered owner of the offending vehicle. An *ex parte* award was passed by the Tribunal allowing the claim petition granting permission for the insurer to recover the claim amount from the owner of the vehicle on the ground that fitness certificate of the vehicle was not produced before the Tribunal.

3. The petitioner alleges that even in the absence of fitness certificate for a vehicle, the insurer is liable to indemnify the owner. The petitioner points out that a Full Bench of this has reiterated the

said position of law in the judgment in Augustine v. Ayyappankutty reported in 2015 (2) KLT 139. The petitioner alleges that the *ex parte* award to the extent of permitting the insurer to recover the award amount from the petitioner/owner for want of fitness certificate of the vehicle is unjustifiable under law. Therefore, he filed a petition to set aside the *ex parte* order along with a petition to condone the delay, which were dismissed by Ext.P6 order, which is under challenge.

4. Arguments have been heard.

5. Through the petition on which the impugned order was passed, the petitioner prayed for a consideration of the claim on merits after affording him a chance to submit his defense. It appears from record that no objections were filed by the respondents.

6. The learned Tribunal was not inclined to accept the case of the petitioner for the reason that the petitioner was fully aware of the claim against him as the registered owner and he should have put up

his defense before the Tribunal by engaging a lawyer. The Tribunal was not convinced by the petitioner's explanation for the delay in seeking suitable relief. Therefore, the Tribunal dismissed the petitions.

7. The definite stand taken by the petitioner is that he stands a fair chance of winning his case on the basis of the decision of this Court in **Augustine's** case (cited supra). Therefore, however negligent the first omission may be, this Court is of the view that it is only just and proper to grant the petitioner an opportunity to defend his case.

In the result, the original petition is allowed. Ext.P6 which is the order impugned is set aside. I.A Nos.1210 of 2014 and 1211 of 2014 in O.P(MV) No.586 of 2009 on the files of the Motor Accidents Claims Tribunal, Palakkad shall stand allowed. The delay is condoned and the *ex parte* order to the extent it fasten the liability on the petitioner to pay compensation is set aside. The learned Tribunal

shall afford the petitioner herein an opportunity to file written statement and to consider his liability vis-a-vis the liability of the insurer, after affording the petitioner and affected parties an opportunity of being heard.

It is made clear that the petitioner cannot challenge the award on the question of quantum. The only question left open to be decided is regarding the right of the insurer to claim recovery from the petitioner after making the payment to the claimant.

Sd/-

**A.V.RAMAKRISHNA PILLAI**  
**JUDGE**

krj