

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

OP (MAC).No. 102 of 2015

EP299/2010 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM.

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PETITIONER/PETITIONER/DECREE HOLDER:

**K.SHAJIKUMAR, AGED 50,
S/O. KUTTAN, CHULUPANAMBIL VEETIL,
ALAPATT VILLAGE, KARUNAGAPPALY.**

**BY ADVS.SRI.ARUN BABU
SRI.R.NIKHIL**

RESPONDENT/RESPONDENT/JUDGMENT DEBTOR:

**DIVISIONAL MANAGER,
ORIENTAL INSURANCE CO. LTD, KOLLAM - 691 001.**

BY SMT.K.S.SANTHI, SC

**THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 10-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

OP (MAC).No. 102 of 2015

APPENDIX

PETITIONER(S)' EXHIBITS:

P1 - THE TRUE COPY OF THE JUDGMENT IN MACA 67/2011 DATED 08.10.2014.

**P2 - THE CERTIFIED COPY OF THE ORDER DATED 18.5.2015 IN EP 299/2010 OF
MACT KOLLAM.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

O.P.(MAC) No.102 of 2015

Dated this the 10th day of August, 2015.

JUDGMENT

Aggrieved by Ext.P2 order of the tribunal in executing the award in the light of Ext.P1 judgment, the petitioner has come up before this Court.

2. The petitioner was awarded Rs.95,600/- along with interest at the rate of 7.5% per annum from 10.5.2015 by MACT, Kollam. Respondent took up the matter in appeal as MACA 67/2011 where in a compromise was entered into as a result of which the total amount was fixed as Rs.75,000/-. The appellate court directed the respondent to pay the same within a month from the date of the order. The petitioner alleges that there is a direction in the judgment to the respondent to deposit the amount within a month and a clause which states the award can be executed if the amount as per compromise is not deposited within one month. No amount was deposited within the time so fixed. However, the tribunal dismissed the

execution stating that the award has merged with the order of this Court and cannot be executed. The tribunal failed to exercise the due jurisdiction vested in it; it is alleged.

3. Notice has been served on the learned standing counsel for the respondent insurance company.

4. The Division Bench of this Court in Ext.P1 judgment in M.A.C.A No.67 of 2011 has directed the insurer to deposit the amount within a period of one month from the date of judgment. It is true that MACA 67/2011 was disposed of on the basis of a settlement. Though the original award was for Rs.95,600/- along with interest at the rate of 7.5% p.a. from 10.5.2015, insurance company agreed to settle the claim by paying Rs.75,000/-. On the basis of settlement, Ext.P1 judgment was passed and time limit of one month was also fixed by Ext.P1. However, there was a default clause wherein it was made clear that if there is any default on the part of the insurance company to make the deposit, the respondent can get the award of the tribunal executed. As the said direction

has not been complied with by the respondent insurance company, the petitioner moved the tribunal with the execution. However, the same happened to be dismissed vide Ext.P2 order for the reason that the order of the tribunal has merged with the judgment of this court in MACA No.67/2011. As Ext.P1 is a self serving order enabling the petitioner to get the award executed in the event of failure on the part of the insurance company to make the deposit in the time limit prescribed, the learned tribunal was not at all justified in dismissing the E.P.

Therefore, original petition is allowed. Ext.P2 order is set aside and the matter is remitted back to the tribunal for considering the E.P. in accordance with law.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.