

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

OP (MAC).No. 148 of 2015 (O)

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AGAINST THE COMMON ORDER DATED 30.09.2015 IN I.A.NO. 1064/2015
AND I.A. NO. 1065/2015 IN O.P. (M.V.) NO. 779/2009 ON THE FILE OF THE
HON'BLE MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA
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PETITIONERS/RESPONDENT NOS. 1 & 2 IN THE O.P(MV):

-
- 1. KHALID, AGED 38 YEARS
S/O. POOKKOYIL MOIDEENKUTTY
KURUKKOL DESOM
VALAVANNOOR VILLAGE
TIRUR TALUK**
 - 2. FASALUDHEEN
AGED 27 YEARS,
S/O. VELATHU VEETIL
IBRAHIM
IRINGAVOOR DESOM
VALAVANNOOR VILLAGE
TIRUR TALUK**

BY ADV. SMT.N.DEEPA

RESPONDENTS/PETITIONER AND 3RD RESPONDENT IN THE O.P.(MV):

-
- 1. ABDUL AZEEZ
AGED 44 YEARS
S/O. KOZHIVEETIL MUHAMMEDALI RAVUTHER
THIRUVANCHIKULAM DESOM
METHALA VILLEG
KODUNGALLUR TALUK
PIN - 680 669**
 - 2. I.C.I.C.I LOMBARD INSURANCE CO. LTD.
CALICUT
FUNCTIONING AT SHANMUGHAM ROAD
MARINE DRIVE
KOCHI
PIN - 682 031**

R2 BY ADV. SRI.R.AJITH KUMAR, SC.

**THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 02-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 A TRUE COPY OF THE CLAIM PETITION FILED BY THE 1ST RESPONDENT
HEREIN AS O.P.(MV)779/2009 ON THE FILE OF THE HON'BLE MOTOR
ACCIDENTS CLAIMS TRIBUNAL,IRINJALAKUDA
- P2 A TRUE COPY OF THE AWARD DT.30.07.2013 IN O.P.(MV)NO.779/2009 ON
THE FILE OF THE HON'BLE MOTOR ACCIDENTS CLAIMS
TRIBUNAL,IRINJALAKUDA
- P3 A TRUE COPY OF THE PETITION IN I.A.4037/2014 IN O.P.(MV)NO.779/2009
ON THE FILE OF THE HON'BLE MOTOR ACCIDENTS CLAIMS
TRIBUNAL,IRINJALAKUDA
- P4 A TRUE COPY OF THE DEMANT NOTICE ISSUED BY THE DY.TAHSILDAR
(RR),TALUK OFFICE,TIRUR DT.23.06.2015
- P5 A TRUE COPY OF THE I.A.1064/2015 IN O.P.(MV)779/2009 ON THE FILE OF
THE HON'BLE MOTOR ACCIDENTS CLAIMS TRIBUNAL,IRINJALAKUDA
DT.01.04.2015
- P6 A TRUE COPY OF THE I.A.1065/2012 IN O.P.(MV)779/2009 ON THE FILE OF
THE HON'BLE MOTOR ACCIDENTS CLAIMS TRIBUNAL,IRINJALAKUDA
DT.01.04.2015
- P7 A TRUE COPY OF THE COMMON ORDER DT.30-09-2015 IN I.A.1064/2015
AND I.A.1065/2015 IN O.P(MV)779/2009 ON THE FILE OF THE HON'BLE
MOTOR ACCIDENTS CLAIMS TRIBUNAL,IRINJALAKUDA
- P8 A TRUE COPY OF THE RC PARTICULARS OF MINI LORRY BEARING
REG.NO.KL-55 B 8300
- P9 A TRUE COPY OF THE DRIVING LICENSE OF THE 2ND PETITIONER DT.23-
10-2008
- P10 A TRUE COPY OF THE CERTIFICATE OF INSURANCE ISSUED BY ROYAL
SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED TO THE 1ST
PETITIONER DT.07-07-2008
- P11 A TRUE COPY OF THE CERTIFICATE CUM POLICY SCHEDULE ISSUED BY
THE 2ND RESPONDENT HEREIN DT.03.07.2009.

RESPONDENT(S)' EXHIBITS:- NIL

/TRUE COPY/

P.A. TO JUDGE

DCS

K. HARILAL, J.

O.P. (MACT) No. 148 of 2015

Dated this the 02nd day of December, 2015

J U D G M E N T

The petitioners are the respondent Nos. 1 and 2 in O.P.(M.V.) No. 779/2009 on the files of the Motor Accidents Claims Tribunal, Irinjalakuda, and the respondents herein are the petitioner and the third respondent therein respectively. The above petition was filed by the first respondent herein under Sections 140 and 166 of the Motor Vehicles Act claiming compensation to the tune of Rs. 2,00,000/- with interest in a motor accident. Though, the petitioners have received notice on Ext. P1 and instructed the first petitioner's brother to conduct the case, by engaging a lawyer, he has not taken any steps to defend the proceedings and as a result, the Tribunal set the petitioners ex-parte and passed the award directing the second respondent herein to deposit the amount and recover the same from the petitioners herein. In

pursuance of Ext. P2 award, the second respondent deposited the amount and filed I.A. No. 4037/2014 in Ext. P1 proceedings to recover the amount from the petitioners. The Tribunal proceeded with Ext. P3 and the first petitioner has received recovery notice. When the petitioners came to know the passing of Ext. P2 award on receipt of the recovery notice, they have filed I.A. No. 1064/2015 to set aside the ex-parte award and also filed I.A. No. 1065/2015 for condoning the delay of 579 days in filing the petition for setting aside the ex-parte award. But, the Tribunal, without considering the contentions of the petitioners, dismissed the aforesaid I.As, as per Ext. P7 common order, which is under challenge in this original petition.

2. Heard the learned counsel for the petitioners and the learned Standing Counsel appearing for the second respondent.

3. Going by the impugned order, it is the case of the petitioners that, on receipt of the notice on

Ext. P1, the first petitioner entrusted his brother, to make sufficient arrangements to contest the case before the Tribunal by engaging a lawyer. But, he has not done anything in this respect as instructed by the first petitioner and an ex-parte award was passed after setting the petitioners ex-parte. There is a delay of 579 days in filing Exts. P4 and P5 to set aside Ext. P2 award. As regards the delay, the explanation is that the first petitioner was employed at Bombay and he came to know the passing of the award only when he received the revenue recovery notice. Even though, such a contention was raised, no material had been produced in support of the said contention. Moreover, after examining the records, the Tribunal observed that even after the receipt of notice intimating revenue recovery steps, they did not appear before the court or file any objection. Thereafter, the court allowed the revenue recovery steps against the petitioners and after a long lapse of time, the

petitioners approached the court to set aside the ex-parte award and also to condone the delay of 579 days. Needless to say, no evidence has been adduced to show that there were sufficient grounds for their non-appearance before the Tribunal during the course of trial. Considering the aforesaid reason, I do not find any fault with the Tribunal in arriving at such a finding. But, I am inclined to take a different view, in a different perspective. When the substantial justice and technical considerations are pitted against each other, the substantial justice deserves to be preferred rather than disposal of the case, on technical consideration.

4. In the above view of the matter, the petitioners can be given an opportunity to contest the original petition, on payment of cost. Consequently, Ext. P7 common order and Ext. P2 award will stand set aside and the matter will stand remitted back to the Tribunal, on payment of Rs. 3,000/- to the Tribunal as cost, within a period of two months from today.

Needless to say, Ext. P5 petition to set aside the ex-parte award and Ext. P6 petition for condonation of delay will stand allowed, in that event. In case, the petitioners fail to pay the cost within the time, Ext. P7 common order and Ext. P2 award, under challenge, will stand in force as such. It is made clear that all further revenue recovery proceedings, under Ext. P4 demand notice, shall be kept in abeyance, for a period of four months from today and the Tribunal is directed to dispose of the Original Petition, on merits within the aforesaid period, if the petitioners pay the cost in time.

The original petition is disposed of accordingly.

**K. HARILAL,
JUDGE**

DCS