

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

OP (MAC).No. 149 of 2015 (O)

OPMV 1384/2005 OF MOTOR ACCIDENT CLAIM TRIBUNAL, ALAPPUZHA
.....

PETITIONER(S)/2ND RESPONDENT:

**NATARAJAN K.G., S/O.GOPALAN,
KALANKOVILAKAM, THIRUNELLOOR P.O.,
CHERTHALA, ALAPPUZHA.**

BY ADV. SRI.G.PRABHAKARAN

1ST RESPONDENT(S)/PETITIONER/3RD RESPONDENT:

- 1. SUNIL T.L., S/O.NARAYANAN, AGED 21 YEARS,
RESIDING AT POKKAMTHARA VEEDU,
PATTANAKKADU PANCHAYATH, WARD II,
VETAKKAL P.O., CHERTHALA, ALAPPUZHA,
PIN -688 529.**
- 2. KUMARI, W/O.PONNAPPAN, AGED 45,
RESIDING AT VENGEVELI VEEDU,
THANNERMUKKOM PANCHAYATH,
WARD II, VARANADU P.O.,
ALAPPUZHA - 688 539.**
- 3. NATIONAL INSURANCE COMPANY LTD.,
REPRESENTED BY ITS BRANCH MANAGER,
BRANCH OFFICE, CHERTHALA - 688 539.**

**R3 BY ADVS. SRI.M.A.GEORGE
SMT.DEEPA GEORGE**

**THIS OP (MAC) HAVING COME UP FOR ADMISSION ON 26-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP (MAC).No. 149 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE CLAIM PETITION IN OP(MV) NO.1384/2005
DTD.15.10.2005.

EXT.P2: TRUE COPY OF TH EWRITTEN STATEMENT FILED BY THE 3RD RESPONDENT
DTD.28.4.2010.

EXT.P3: TRUE COPY OF THE EX-PARTE AWARD IN OP(MV) NO.1384/2005
DTD.22.11.2010.

EXT.P4: TRUE COPY OF THE EXECUTION PETITION.

EXT.P5: TRUE COPY OF THE REVENUE RECOVERY NOTICE WITHITS
NO.2015/1607/4/200 DTD.17.9.2015.

EXT.P6: TRUE COPY OF THE REVENUE RECOVERY NOTICE WITHITS
NO.2015/1607/4/200 DTD.17.9.2015.

EXT.P7: TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER/2ND RESPONDENT
DTD.3.11.2014.

EXT.P8: TRUE COPY OF THE PETITION DTD.3.11.2014.

EXT.P9: TRUE COPY OF THE DRIVING LICENSE PARTICULARS LICENSE NO.4/1/1991.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. HARILAL, J.

= = = = =

O.P. (MAC) No. 149 of 2015

- - - - -

Dated this the 26th day of November, 2015

J U D G M E N T

The petitioner is the owner of the stage carriage bus bearing registration number KL 4/G 2529, having a valid stage carriage permit. The said vehicle met with an accident and as a result, the 2nd respondent sustained injuries. Thereafter, she filed a claim petition as O.P. No. 1384 of 2005, arraigning the driver as the 1st respondent, the petitioner, being the owner of the vehicle, as the 2nd respondent and National Insurance Company, as the 3rd respondent. On receipt of the notice from the Tribunal, though, the petitioner entrusted a counsel, he could not defend the case, due to the omission from his part. Consequently, Ext.P3 *ex parte* award was passed against the petitioner, directing to

-: 2 :-

compensate the 3rd respondent, the insurer, for the amount given to the injured, as compensation. Aggrieved by Ext.P3, the petitioner has preferred I.A. No. 5178 of 2015, in O.P. No. 1384 of 2005 to set aside the *ex parte* award passed against the petitioner and others, with a petition to condone delay.

2. In the meantime, the Insurance Company has granted amount to the claimant and thereafter, filed Execution Petition before the Tribunal to realise the compensation from the petitioner and Exts.P5 and P6, recovery notices also have been served to the petitioner, for the realisation of the amount.

3. Even though, I.A. No. 5178 of 2015 was filed along with the petition to condone delay, those petitions have not been disposed of so far. If the amount is allowed to be realised from the petitioner in execution of the *ex parte* award, before the disposal of I.A. No. 5178

-: 3 :-

of 2015 and the petition to condone delay, the petitioner will be put into irreparable hardship and grave loss.

4. Heard the learned counsel for the petitioner and Smt. Deepa George, learned standing counsel appearing for the 3rd respondent.

5. Even though, an *ex parte* award has been passed, it stands admitted that I.A. No. 5178 of 2015 with the delay petition to condone delay is pending for consideration, before the Tribunal. As rightly submitted by the learned counsel for the petitioner, if the Execution Petition is allowed, before the disposal of the I.A. No. 5178 of 2015 and the petition to condone delay, the petitioner will be put into irreparable hardship and grave loss.

6. Having regard to the said fact, the Motor Accident Claims Tribunal, Alappuzha, is directed to dispose I.A. No. 5178 of 2015 and petition to condone

-: 4 :-

delay, at the earliest, at any rate, within a period of one month, from the date of receipt of the copy of this judgment. The execution proceedings shall be kept in abeyance, till the disposal of the I.A. No. 5178 of 2015 and the petition to condone delay.

This O.P.(MAC) is disposed of accordingly.

Sd/-
K. HARILAL,
JUDGE

DST

//True copy//

P.A. To Judge