

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

O.P.(MAC).No.10 of 2014 (O)

[AGAINST THE ORDER DATED 20.08.2013 IN I.A.NOS.948/2011 AND 949/2011 IN
O.P.(MV) NO.2546/2004 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THIRUVANANTHAPURAM].

PETITIONER(S):-

K. MAHADEVAN, AGED 40 YEARS, S/O.KRISHNAYYAR,
RESIDING AT KRISHNALAYAM, AMBALATHARA,
POONTHURA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.R.NIKHIL.

RESPONDENT(S):-

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1. R. RADHAKRISHNAN UNNITHAN,
KRISHNA BHAVAN, NAVAIKULAM,
THIRUVANANTHAPURAM DISTRICT-695603.
 2. ANIL,
T.C.36/1218, VAYALIL VEEDU, VALLAKADAVU,
THIRUVANANTHAPURAM DISTRICT-695008.
 3. THE DIVISIONAL MANAGER,
NEW INDIA ASSURANCE CO.LTD, DIVISIONAL OFFICE
KOTTARATHIL BUILDING, PALAYAM
THIRUVANANTHAPURAM-695001.

R3 BY STANDING COUNSEL SRI.V.P.K.PANICKER.

THIS ORIGINAL PETITION (MAC) HAVING BEEN FINALLY HEARD ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1 A TRUE COPY OF THE CLAIM PETITION NUMBERED AS
O.P.(MV)NO.2546/2004 ON THE FILES OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P2 A TRUE COPY OF I.A.949/2011 IN O.P.(MV)NO.2546/2004 ON THE
FILES OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THIRUVANANTHAPURAM.
- EXT.P3 A TRUE COPY OF I.A.948/2011 IN O.P.(MV)2546/2004 ON THE FILES
OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THIRUVANANTHAPURAM.
- EXT.P4 A TRUE COPY OF ORDER DATED 20.08.2013 I.A.948/2011 IN
O.P.(MV)2546/2004 ON THE FILES OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P5 A TRUE COPY OF ORDER DATED 20.08.2013 I.A.948/2011 IN
O.P.(MV)2546/2004 ON THE FILES OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, THIRUVANANTHAPURAM.
- EXT.P6 TRUE COPY OF THE ORDER DATED 30.11.2009 OF THE
HON'BLE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THIRUVANANTHAPURAM IN O.P.(MV).NO.2546 OF 2004.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

- true copy -

K. Vinod Chandran, J.

O.P(MAC) No.10 OF 2014-O

Dated this the 2nd day of February, 2015

JUDGMENT

The Original Petition is filed against Exhibits P4 and P5 orders of the Motor Accidents Claims Tribunal, Thiruvananthapuram [for brevity “the Tribunal”]. The petitioner is the claimant in O.P. (M.V.).No.2546 of 2004, which claim was filed for compensation, for injuries suffered in an accident which occurred on 23.09.2004. The claim itself was dismissed on 30.11.2009, by Exhibit P6, with the following order:-

“Petitioner has no representation. Documents not produced and no steps taken as directed. Petitioner called absent.

In the result, OP is dismissed. No costs”.

Hence, even after five years of the filing of the claim petition, the petitioner had not produced documents to substantiate his case.

2. Subsequently, the petitioner filed an application for restoration of the claim petition and an application for condonation of delay, in filing the application to set aside ex parte order, which are evidenced at Exhibits P2 and P3. In Exhibit P2, the reason stated for

the non-appearance of the petitioner was that though the case was posted to 30.11.2009, the Advocate Clerk had wrongly noticed the posting as 30.11.2010. The applications filed at Exhibits P2 and P3 were dated 11.03.2011, again after more than four months from 30.11.2010. For that, the explanation offered in Exhibit P3 was that the petitioner was laid up due to jaundice from 20.11.2010 onwards. The said applications were considered and rejected by the Tribunal by Exhibits P4 and P5.

3. The learned counsel for the petitioner contends that Exhibit P4 rejection was on a totally wrong premise. The delay of 466 days was correctly computed from 30.11.2009 itself. The Insurance Company also accepts that the delay is so computed.

4. Be that as it may, the dismissal of the claim petition itself was for the reason that no documents were produced. The petitioner's contention is that the Tribunal had posted the case to 30.11.2009 and the Advocate Clerk had noted the posting date as 30.11.2010. The further delay was explained on the ground that the petitioner was suffering from jaundice. Evidently no medical certificate is produced and to pre-empt such a direction, the petitioner contends that he had not been undergoing treatment with

any registered medical practitioner. In any event, the explanation offered is specious.

5. However, the petitioner is alleged to have suffered some grievous injuries in the accident. In such circumstance, it is only proper that the application for compensation be considered on merits. The pendency of the matter from 2004 occurred only because of the default of the petitioner. The claim was dismissed for reason of default in appearance and non-production of documents; even five years from the date of accident. The petitioner would be entitled to interest, if at all any compensation is awarded, from 28.01.2014, the date on which the above Original Petition was filed. The petitioner shall also pay a cost of Rs.2,500/- [Rupees two thousand and five hundred only] to the Insurance Company, which shall be paid within one month and memo produced before the Tribunal.

Original Petition stands allowed and Exhibits P4, P5 and P6 orders would stand set aside on the petitioner complying with the terms, of cost as indicated above.

Sd/-
K. Vinod Chandran,
Judge

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(true copy)