IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

OP (MAC).No. 26 of 2014 (O)

PETITIONER(S)/APPLICANT/DECREE HOLDER:

FRANCIS JOHN, AGED 53 YEARS,
S/O.M.C.JOHN, MAMPILLIL HOUSE, CHAKKARAPARAMBU,
THAMMANAM, COCHIN-32.

BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENT(S)/JUDGMENT DEBTOR:

1. **SASIDHARAN, AGED 40 YEARS,**
NIKARTHIL HOUSE,
NEAR NALUKULANGARA BHAGAVATHI TEMPLE, THURAVOOR,
KUTHIYATHODU VILLAGE, CHERTHALA,
ALAPPUZHA DISTRICT-688 532.

2. **THE PROPRIETOR,**
DELUXE AUTOMOBILES WORKSHOP, VALANJAMBALAM,
ERNAKULAM-682 016.

3. **THE ASSISTANT COMMISSIONER (INTELLIGENCE),**
SALES TAX DEPARTMENT, ERNAKULAM-682 018.

4. **STATE OF KERALA,**
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

R3 & R4 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN

THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 03-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

OP (MAC).No. 26 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1.PHOTOCOPY OF THE AWARD IN OP(MV) NO.897/1990 DATED 24/10/1998.

EXHIBIT P2.PHOTOCOPY OF THE APPLICATION DATED 25/2/2011 FILED BY TH PETITIONER.

EXHIBIT P3.PHOTOCOPY OF THE ORDER DATED 31/10/2013 IN EA NO.53/201 IN EP NO.9/2010 IN OPMV NO.897/1990.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msv

A.V.RAMAKRISHNA PILLAI, J

OPMAC No.26 of 2014

Dated this the 3rd day of August, 2015

JUDGMENT

Aggrieved by the order rejecting the petitioner's application for attachment is under challenge in this writ petition.

2. The petitioner is the claimant in O.P.(MV) No.897/1990 before the Motor Accidents Claims Tribunal, Ernakulam. The said O.P. is filed for claiming ₹1,50,000/- as compensation for the injuries sustained by the petitioner in a road accident on 28.11.1989. The accident happened due to the rash and negligent driving of the jeep by the first respondent. The jeep belonged to the 4th respondent. The 2nd respondent is the owner of the workshop under whom the first respondent worked and where the vehicle was sent for repairs at the time of the accident. The petitioner claimed ₹1,50,000/- as compensation from the respondents jointly and severally. According to the petitioner, after the trial, the learned

Tribunal found that respondents 1 to 4 are jointly and severally liable to pay compensation to the petitioner and resultantly, Ext.P1 award was passed in favour of the petitioner for realisation of ₹92,500/- with interest at 12% from the date of the petition till 28.10.1995 and from 1.1.1996 till realisation and proportionate cost from respondents 1 to 4 jointly and severally. It is also directed that when the amount is deposited, the petitioner is allowed to withdraw an amount of ₹9000/- and the balance amount should be deposited as fixed deposit in the name of the petitioner for a period of 5 years in any one of the nationalised banks with liberty to withdraw interest every month.

3. According to the petitioner, Pursuant to Ext.P1, he has filed an execution petition as E.P.No.9/2010 in O.P.MV No.897/1990 for realisation of an amount of ₹3,10,816/- from the respondent/judgment debtor, the above E.P. is still pending before the Tribunal for consideration. Out of the total amount, the respondents/judgment debtors 3 and 4 had deposited the admitted amount of ₹1,74,567/-.

The petitioner filed Ext.P2 application for an order of attachment of ₹3,10,816/-from the account of the District Treasury Officer, Civil Station Building, Kakkanad. The Tribunal passed Ext.P3 order dismissing Ext.P2 application on the ground that the 3rd and 4th respondents deposited their 2/4th portion of award amount and the petitioner has to proceed against respondents 1 and 2 for the balance amount. It is with this background, the petitioner has come up before this Court.

4. In the counter affidavit filed by the State, it is contended that the third and fourth respondents deposited a portion of the compensation amount and discharged the liability and therefore, they are not liable and responsible for the payment to be made by the first and second respondents. According to them, the petitioner ought to have proceeded against respondents 1 and 2 instead of filing execution petition against the State for attaching the amount from the Government Treasury.

5. Arguments have been heard.

6. It appears from the award that the Motor Accidents

Claims Tribunal made the respondents 1 to 4 in the O.P. jointly and severally liable to pay the entire amount of compensation together with interest at the rate of 12% per annum from the date of petition till 28.10.1995 and from 1.1.1996 till realisation from all the respondents. Under such a situation, it is open to the petitioner to proceed against any of the respondents against whom the award has been passed. In this case, for speedy realisation, the petitioner has proceeded against the State. Therefore, the only option before them is to remit the entire amount as per the award and get the same realised from the owner and driver who are the other respondents in this case. Therefore, this Court is of the view that the impugned order shall not be allowed to stand.

In the result, this writ petition is allowed. Ext.P3 is set aside. It is hereby made clear that the petitioner should be allowed to recover the award amount from any of the respondents and therefore, E.A.53/2011 in E.P. 9/2010 on O.P.MV No.897/1990 shall stand restored.

The learned Motor Accidents Claims Tribunal, Ernakulam is directed to proceed with the E.A. in accordance with law and in the light of what has been stated above.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

css/ **true copy**

P.S.TO JUDGE