

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

OP (MAC).No. 177 of 2014 (O)

PETITIONER(S):

**THE PRINCIPAL,HOLY FAMILY E.M.PUBLIC SCHOOL
KALoor, MUVATTUPUZHA TALUK.**

**BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH**

RESPONDENT(S):

- 1. JOSY,
S/O.P.G.PETER, PALLICKATHAI HOUSE, THUMBOLI WARD
ALAPPUZHA - 688 001.**
- 2. PREMKUMAR
S/O.SIVANANDAN, KIZHAKKEVELIYIL HOUSE, A.P.WARD II
ALAPPUZHA - 688 001**
- 3. THE UNITED INDIA INSURANCE CO.LTD
THODUPUZHA BRANCH
REPRESENTED BY ITS MANAGER - 685 584.**

**R3 BY ADV. SRI.JOHN JOSEPH VETTIKAD
R3 BY ADV. SRI.C.JOSEPH JOHNY
R2 BY ADV. SRI.M.R.ARUNKUMAR
R2 BY ADV. SRI.PADMALAYAN.P.P.**

**THIS OP (MAC) HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

OP (MAC).No. 177 of 2014 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE COPY OF THE AWARD IN O.P.(MV) NO.1722 OF 2006,
MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA DATED
28/07/2011.**

**EXHIBIT P2: A TRUE COPY OF THE AFFIDAVIT AND PETITION FOR
SETTING ASIDE THE EX-PARTE AWARD DATED 17/06/2013.**

**EXHIBIT P3: A TRUE COPY OF THE AFFIDAVIT AND PETITION
CONDONING THE DELAY IN SETTING ASIDE THE EX-PARTE
AWARD DATED 17/06/2013.**

**EXHIBIT P4: A TRUE COPY OF COMMON ORDER DATED 22/07/2014 IN
I.A.NOS. 2111 OF 2013 AND 2112 OF 2013.**

RESPONDENT(S)' EXHIBITS: NIL

// TRUE COPY //

PA TO JUDGE.

SB

K. VINOD CHANDRAN, J.
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O.P.(M.A.C) No.177 of 2014 - O
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Dated this the 15th day of January, 2015

J U D G M E N T

The petitioner, a registered owner of a vehicle, is aggrieved with Ext.P4 order of the Motor Accident Claims Tribunal (M.A.C.T), Alappuzha. The petitioner had filed an application for setting aside the award passed with respect to the claim in a motor accident, in which the petitioner's vehicle was involved. The petitioner had also moved an application for delay condonation, which delay was for a period of 80 days. The petitioner's contention is that, no notice was issued and the petitioner was hence not aware of the proceedings at all. The driver, who is the employer of the petitioner also remained ex-parte.

2. The specific contention raised was that, the Principal, the petitioner herein, had not accepted the notice and one Mr. Rajesh, had accepted the notice as per the acknowledgment card on which a signature was affixed on

07.02.2007. The petitioner asserts that, there is no person authorised to receive the notice on behalf of the Principal nor does the petitioner have an employee with that name. The learned Tribunal found that even if the said contention is accepted, there is no explanation for the delay of 80 days.

3. In fact, very specifically it has been stated that, the petitioner received notice of the award only in the execution and immediately thereafter, an application was filed to set aside the ex-parte award. Considering the fact that, the delay occasioned was of 80 days, it is only proper that the Tribunal had set aside the award to atleast consider the question of liability, which by the present award has been mulcted on the registered owner, by way of permission granted to the insurer to recover the same; for reason of the driver having no licence. It is also submitted by the learned Counsel appearing for the driver that he in fact has a licence.

4. In the circumstances pleaded in the writ petition and the grounds stated in the interlocutory

application, this Court is of the opinion that the award has to be set aside, however, only for the issue of consideration of the liability. In such circumstance, the Tribunal shall not issue any notice to the claimants. The Insurance Company, the registered owner, the petitioner herein and the driver shall appear before the Motor Accidents Claims Tribunal, Alappuzha on 29.01.2015. The award passed exhibited as Ext.P1, in O.P(M.V) No.1722 of 2006, dated 28.07.2011, is set aside only to the extent of the liability fixed on the registered owner. The said issue shall be considered after giving an opportunity to the parties to adduce evidence on the question of liability and a decision shall be taken at any rate within a period of four months from the date of appearance.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge.