

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 716 of 2012 (L)

PETITIONER :

**V.M.CHERIAN KUNJU,
S/O. VARKEY MATHAI, VENGAL THUNDIYIL,
KALLUNKAL P.O., THIRUVALLA, PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.T.K.KOSHY
SMT.V.V.RISANI**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
PATHANAMTHITTA. PIN- 689 645.**
- 2. THE VILLAGE OFFICER,
NEDUMPRAM VILLAGE, THIRUVALLA TALUK. PIN- 689 101.**
- 3. THE MANAGER,
NATIONAL INSURANCE CO. LTD., THIRUVALLA- 689 101.**
- 4. MANIYAN, S/O KUTTITHANKAN,
MANAPPARAMBIL, PODIYADI P.O.,
THIRUVALLA. -689 110**

**R1 & R2 BY GOVERNMENT PLEADER SRI.V.K.RAFEEQ
R3 BY ADV. SRI.E.M.JOSEPH
R4 BY ADVS. SRI.T.P.PRADEEP
SRI.S.SREEDEV
SRI.M.A.GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE CLAIM PETITION, O.P. (MV) NO. 360/2001 DATED 03-04-2001 ON THE FILE OF THE MACT, MAVELIKKARA
- EXHIBIT P2: TRUE COPY OF THE REGISTRATION PARTICULARS DATED 28-03-2011 ISSUED BY JT. R.T.O., THIRUVALLA.
- EXHIBIT P3: TRUE COPY OF THE VEHICLE MAHAZAR DATED 01-12-2000.
- EXHIBIT P4: TRUE COPY OF THE AWARD DATED 24-09-2010 ON OP (MV) NO. 360/2001 OF THE MACT, MAVELIKKARA.
- EXHIBIT P5: TRUE COPY OF THE E.P. NO. 60/2011 IN OP(MV) NO. 360/2001 ON THE FILE OF MACT, MAVELIKKARA.
- EXHIBIT P6: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN E.P. NO. 60/2011 DATED 31-05-2011.
- EXHIBIT P7: TRUE COPY OF I.A. NO. 1347/2011 DATED 31-05-2011 FILED BY THE PETITIONER.
- EXHIBIT P8: TRUE COPY OF THE REVIEW PETITION I.A. NO. 1526/2011 DATED 15/06/2011 FILED BY THE PETITIONER.
- EXHIBIT P9: TRUE COPY OF THE OBJECTION FILED BY R3 DATED. 10-11-2011 TO EXT-P8.
- EXHIBIT P10: TRUE COPY OF THE ORDER DATED 06-12-2011 IN I.A. NO. 1526/2011 PASSED BY THE MACT, MAVELIKKARA.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P.A.TO.JUDGE

K. VINOD CHANDRAN, J.
=====

W.P.(C) No.716 of 2012 - L
=====

Dated this the 11th day of February, 2015

J U D G M E N T

The petitioner is aggrieved with the liability mulcted on the petitioner by the award at Ext.P1. An autorickshaw bearing registration No. KL-3/4279, was involved in an accident, in which one Rajappan suffered serious injuries. The claim petition was filed before the Motor Accidents Claims Tribunal, Mavelikara making the driver as the first respondent, the petitioner as the second respondent. The 4th respondent herein, is the 3rd respondent and the insurance company is the 4th respondent before the Tribunal.

2. The specific averment in Ext.P1 claim application is that the 2nd respondent is the registered owner and he transferred the ownership in the name of the 3rd respondent, who appointed the 1st respondent to drive the autorickshaw. The petitioner herein obviously did not

appear before the Tribunal. The Tribunal having considered the evidence adduced; found policy violation. The insurance company was directed to pay the award amounts, but, however entitled it to proceed for recovery against the registered owner.

3. The violation of policy found, was the absence of a valid driving licence, for the 1st respondent. The insurance company paid the amounts and then proceeded for recovery. The petitioner immediately filed an application for correction, Ext.P7, in which a document was produced. The document so produced was the registration particulars of the offending vehicle issued by the RTO, Thiruvalla dated 28.03.2011. The said document is produced herein as Ext.P2. The same indicates that the autorickshaw stood transferred in the name of one T.T George on 20.09.1999 and then to the 4th respondent. The accident occurred on 28.11.2000, when obviously the registration stood transferred in the name of another person. The insurance policy however continued in the name of the petitioner

herein, which is the fault of the transferee.

4. The correction petition was not considered and no orders were passed in the correction petition. It is submitted by the learned Counsel that a review was directed to be filed. This Court cannot find any infirmity in that since after having passed the award, on the basis of the correction petition, the liability cast on one of the respondents could not be shifted to another. The petitioner then filed a review petition which stood rejected by Ext.P8.

5. The Tribunal found that there was no delay condonation application. But, however, went on to consider the question of sustainability of the claim. The petitioner's contention that the registration of the vehicle had been changed was noticed. However, on the ground of the petitioner having not produced the registration particulars, the review was dismissed.

6. The learned Counsel for the petitioner contends that, along with the correction petition, the document evidencing transfer of registration was produced and the

same was available in the files of the MACT. It is to be noticed that prima facie the petitioner was seen to have transferred the vehicle long before the accident. A copy of the registration particulars was produced at Ext.P2. The scene mahazar prepared by the Police, is also produced at Ext.P3, which indicated that on examination of the records of the vehicle, the Police had also noticed that the transfer was effected in the name of the 4th respondent herein.

7. It is to be noticed that there is gross negligence on the part of the petitioner in not having appeared before the Tribunal when notice was issued. If the petitioner had appeared at the proper time and produced the document, evidencing transfer, definitely, the Tribunal would not have passed the award mulcting liability on the petitioner. The petitioner has also not proceeded in the proper manner; when a correction petition and then a review was filed without a delay condonation application. The correct procedure was to file an application for setting aside the ex-parte award with a delay condonation application. In

any event, in the interest of justice, this Court having found that the issue of liability can be considered afresh, the said consideration shall be only on the petitioner remitting an amount of Rs.5,000/- (Rupees five thousand only/-) towards the Kerala State Mediation and Re-conciliation Centre, Ernakulam on or before 25.03.2015.

8. The petitioner shall also be given an opportunity to adduce evidence and mark the document produced already before the Tribunal, so as to establish his case. Only to facilitate the same Ext.P8 order in I.A 1526 of 2011 in O.P(M.V)No.360 of 2001, would stand set aside. The award would stand set aside on condition stipulated above, only to the extent of the liability to pay the award amounts being mulcted on the petitioner. The question being only of the liability, the Tribunal would confine the adjudication to that aspect alone. No notice need be issued to the claimant since the claimant has already received the money from the insurance company. The question as to the liability to pay the amounts shall be considered and if the

petitioner's claim is found to be sustainable, then definitely, the petitioner shall be exonerated from such liability. The petitioner, the insurance company and the 4th respondent shall appear before the Motor Accidents Claims Tribunal, Mavelikara on 27.03.2015. After permitting the petitioner to adduce evidence within a reasonable time, the issue shall be considered within a period of three months from the date of appearance.

The writ petition would stand disposed of, leaving the parties to suffer their respective costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge