

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WP(C).No. 10227 of 2004 (P)

PETITIONER(S):

**AFTHAIR, AGED 28 YEARS,
S/O. ABDURAHIMAN, AYOTHMUTTILIL HOUSE
IRINGATH AMSOM AND DESOM, KOZHIKODE DISTRICT.**

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S):

- 1. SATHEESH KUMAR S/O. JANARDHANAN,
AGED 26 YEARS, RESIDING AT NELLIPANATH HOUSE
MAKKADA P.O., CHERUKULAM, VIA KAKKODI
KOZHIKODE.**
- 2. M/S. UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE, WHITELINES BUILDING, KALLAI ROAD
KOZHIKODE.**

R1 & R2 BY ADV. SRI.P.SANKARANKUTTY NAIR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

WPC NO.10227/2004

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE CERTIFICATE OF INSURANCE DATED 26.07.1995
- P2 : COPY OF THE AWARD DATED 20.10.2004 PASSED BY TEH II
ADDITIONAL MACAT, KOZHIKODE IN OPMV NO.2374/1995

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.10227 of 2004

Dated this the 29th day of June, 2015

JUDGMENT

This writ petition has been filed seeking an order to set aside Ext.P2 award passed by the II Additional Motor Accidents Claims Tribunal in O.P.(MV) No.2374/1995 to the extent it fastens liability on the petitioner, who is the owner of a Jeep bearing Registration No.KL-11/C-2099, to pay the amount awarded and to direct the 2nd respondent insurer to pay the amount awarded by the Tribunal in Ext.P2 award.

2. By order dated 24.03.2004, this Court granted interim stay of execution of Ext.P2 on condition that the petitioner pays 50% of the amount due under the award before the Tribunal within one month.

3. Though notice was issued to the 1st respondent, who was the claimant before the Tribunal, none appears for him.

4. Heard arguments of the learned counsel for the petitioner and also the learned Standing Counsel for the 2nd respondent insurer.

5. The sole issue that arises for consideration in this writ petition is as to whether the vehicle in question was covered by a valid insurance policy as on the date of accident, i.e., as on 25.07.1995.

6. It is relying on Ext.P1 Certificate of Insurance, the petitioner is contending that the vehicle in question was covered by a valid policy as on 25.07.1995. Ext.P1 would show that the said Certificate of Insurance issued on 26.07.1995 is effective from 3.00 pm on 26.07.1995 to 21.06.1996. In Ext.P1, there is an endorsement to the effect that "Comp. Transfer". Relying on the aforesaid endorsement on Ext.P1 Certificate of Insurance, the learned counsel for the petitioner would contend that, Ext.P1 is a certificate issued by the 2nd respondent insurer after transferring the existing policy in the name of the previous owner of the vehicle, which covers the period prior to 26.07.1995, which includes the date of accident, i.e., 25.07.1995.

7. Per contra, relying on paragraph '8' of the Ext.P2 award, the learned Standing Counsel for the 2nd respondent insurer would contend that, the Tribunal absolved insurer from the liability to pay compensation for the reason that the petitioner could not produce any document to show that the vehicle in

question was covered by a valid insurance policy issued by the 2nd respondent insurer.

8. But, in the absence of any counter affidavit filed by the 2nd respondent insurer, the question whether the vehicle in question was covered by a valid insurance prior to Ext.P1 Certificate of Insurance cannot be decided in this writ petition. At the same time, Ext.P1 prima facie indicates that, it was issued only in continuation of a comprehensive policy, which was in force as on 26.07.1995. If that be so, there is some merit in the contention raised by the petitioner that the vehicle in question was covered by a valid Certificate of Insurance issued by the 2nd respondent insurer as on the date of accident, i.e., on 25.07.1995. It is for the petitioner and the 2nd respondent insurer to agitate that issue before the Tribunal after producing necessary documents and adducing oral evidence.

9. In such circumstances, Ext.P2 award passed by the Motor Accidents Claims Tribunal in O.P.(MV) No.2374/1995 to the extent it fastens liability on the petitioner and the driver of the vehicle to pay the compensation amount awarded by the Tribunal is set aside and the matter is remanded to the Tribunal for considering the aforesaid issue, with notice to the petitioner,

respondents 1 & 2 and also to the driver of the vehicle, who was the 2nd respondent before the Tribunal.

10. Since the claim petition is of the year 1995, I deem it appropriate to direct the Tribunal to take a final decision in this matter within a period of three months from the date of receipt of a certified copy of this judgment.

The interim order passed on 24.03.2004 will continue till disposal of the matter by the Tribunal, if the petitioner has already complied with the condition stipulated by this Court to deposit 50% of the amount covered by Ext.P2 award within one month from the date of that order. The deposit of the balance amount in terms of the award shall be made in terms of the final order to be passed by the Tribunal, as directed above.

The Writ Petition is disposed of as above.

SD/-
ANIL K. NARENDRA,
JUDGE