IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

WP(C).No. 6617 of 2010 (B)

I.A.NOS.1217 OF 2010 AND 1218 OF 2010 IN O.P.(MV) NO.3401 OF 2002
OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR.

PETITIONER :

K.K.RAMESH,
S/O.KRISHNANKUTTY, KUNDUPARAMBIL HOUSE, IV/462
P.O.POTORE, THRISSUR.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.V.K.SHEMEENA
SRI.M.S.UNNIKRISHNAN (OASIS)

RESPONDENT(S):

1. NATIONAL INSURANCE CO. LTD.,
BRANCH OFFICE, AMBIKA ARCADE, M.G.ROAD
P.B.NO.89, THRISSUR.

2. THE DEPUTY TAHSILDAR(RR),
THRISSUR.

3. PRAVEEN @ PRAVEENKUMAR,
S/O.KESAVAN, VARADATTU VALAPPIL HOUSE
MULANKUNNATHUKAVU P.O., THRISSUR.

R1 BY ADV. SRI.JOE KALLIATH
R2 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.6617 OF 2010

APPENDIX

PETITIONERS EXHIBITS:-

EXT.P1: TRUE COPY of the AWARD DATED 20.5.2008 IN OPMV NO 3401/2002 OF MACT THRISSUR

EXT.P2: TRUE COPY OF THE DRIVIN LICENSE OF THE 3RD RESPONDENT

EXT.P3: TRUE COPIES OF THE R R NOTICES DT 19.1.2010 ISSUED BY THE 2ND RESPONDENT

EXT.P4: TRUE COPY OF THE I.A NO. 1218/2010 FILED BY THE PETITIONER BEFORE THE MACT

EXT.P5: TRUE COPY OF THE IA NO. 1217/2010 FILED BY THE PETITIONER BEFORE THE MACT.

RESPONDENT'S EXHIBITS
---------------------- NIL.

jma (true copy)

K. VINOD CHANDRAN, J

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W.P(C) No. 6617 of 2010

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Dated this the 6th day of April, 2015

<u>J U D G M E N T</u>

The petitioner is aggrieved with the award passed at Ext.P1 and the liability mulcted on the petitioner and the registered owner for reason of violation of policy conditions. The alleged violation of policy condition, found by the Tribunal, was that the driver, the 3rd respondent herein, did not have a valid driving licence at the time of the accident. The accident occurred on 09.06.2002, when the 3rd respondent was having a valid driving licence as is indicated by Ext.P2.

2. The contention of the learned counsel for the petitioner is that the petitioner had appeared before the Tribunal and had also filed a written statement producing the policy. However, no notice was issued to 3rd respondent, the driver since no relief was claimed against him. It is to be noticed that the registered

owner was in the party array and it was his responsibility to refute the contention of violation of policy and produce the licence of the driver employed by him to operate the vehicle.

3. In any event, the contention of the Insurance Company remained uncontroverted and hence the liability was cast on the petitioner. When recovery steps were initiated by the Insurance Company, the petitioner approached the Tribunal with Exts.P4 and P5 applications for review. The petitioner also approached this Court with the above writ petition, wherein the recovery proceedings were stayed.

4. The writ petition has been pending before this Court from 2010 and the recovery is also pending from that date. In such circumstance, what would be required is for the Tribunal to consider the claim of violation of policy condition raised by the Insurance Company. There would be absolutely no purpose in keeping the writ petition pending or keeping the issue in limbo without consideration of the issue. In such circumstance, the award at Ext.P1 shall be set aside only to the extent of the liability mulcted on the petitioner on condition of the petitioner paying an amount of

Rs.5,000/- to the Kerala State Mediation and Reconciliation Centre within a period of one month from today. The petitioner shall appear before the Tribunal on 21.05.2015 and if the condition for payment as directed above has been complied with, then the Tribunal shall set aside the order only to the extent of the liability mulcted on the petitioner, the registered owner. If the Insurance Company is not present, notice shall be issued and the petitioner and the Insurance Company shall be allowed to adduce evidence with respect to the contentions raised on violation of policy conditions. The Tribunal shall pass fresh award only to the extent directed herein above, deciding on the liability, whether it be on the Insurance Company or the petitioner, within six months from the date of appearance. It is made clear that no notice be issued to the claimants, since their claim stands settled by the Insurance Company.

Writ petition is disposed of.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge