

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C) .No. 14349 of 2012 (P)

PETITIONER:

K.V.SANTHOSH, AGED 40 YEARS,
S/O.VELAYUDHAN, KUNHATHAN HOUSE,
P.O.THALIKULAM, THRISSUR DISTRICT.

BY ADV. SRI.RAJIT

RESPONDENTS:

1. NEW INDIA ASSURANCE COMPANY LTD.
NATTIKA, THRISSUR DISTRICT-678001.

2. NIKHIL
S/O.CHANDRANGADAN, KAVALLUR HOUSE, P.O.PADIYOOR
THRISSUR DISTRICT-678001.

3. RAFEEQUE
S/O.AMMUKUNJI, PUTHIYAVEETIL HOUSE, P.O. PADIYOOR
THRISSUR DISTRICT-678001.

4. ABDUL RAHSEED P.M.
S/O.MUHAMMED, PUTHIYAVEETIL HOUSE P.O., VATANAPILLY,
THRISSUR DISTRICT-682501

5. NATIONAL INSURANCE COMPANY LTD,
THIRUVANANTHPAURAM-695001

6. THE DEPUTY TAHSILDAR (RR) ,
TALUK OFFICE, CHAVAKKAD, THRISSUR DISTRICT-682502

R5 BY ADV. SRI.MATHEWS JACOB (SR.)
R5 BY ADV. SRI.P.JACOB MATHEW
R1 BY ADV. SRI.K.K.M.SHERIFF
R1 BY ADV. SRI.LAL K.JOSEPH
R1 BY ADV. SRI.A.A.ZIYAD RAHMAN
R6 BY SR. GOVERNMENT PLEADER SRI.T.J.MICHAEL
R5 BY ADV. SRI.M.A.GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS :

EXHIBIT P1. TRUE COPY OF THE DRIVING LICENSE OF THE 4TH RESPONDENT.

EXHIBIT P2. TRUE COPY OF THE AWARD IN OP(MV) NO.912/2006 & OP (MV) NO.913/2006 OF THE MACT, IRINJALAKUDA.

EXHIBIT P3. TRUE COPY OF THE APPLICATION FILED BY THE COUNSEL FOR THE 1ST RESPONDENT TO CORRECT PARA 2 AND PARA 10 OF THE AWARD WHICH IS NUMBERED AS IA NO.400/2011 IN OP NO.912/2006 OF THE MACT, IRINJALAKUDA.

EXHIBIT P4. TRUE COPY OF THE EXECUTION PETITION EP NO.61/2011 IN OP(MV) NO.913/2006 BEFORE THE MACT, IRINJALAKUDA

EXHIBIT P5. TRUE COPY OF THE EXECUTION PETITION EP NO.63/2011 IN OP(MV) NO.912/2006 BEFORE THE MACT, IRINJALAKUDA

EXHIBIT P6. TRUE COPY OF THE NOTICE BEARING NO.2012/8423/8/400 DATED 10/5/2012 OF THE OFFICE OF THE 6TH RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.14349 of 2012

Dated this the 26th day of October, 2015.

JUDGMENT

The petitioner is the 1st respondent in O.P(MV) Nos.912/06 and 913/06 on the files of the Motor Accidents Claims Tribunal, Irinjalakuda. He is the owner of a tempo van bearing Registration No.KL-8/D-4053. According to him, on 26.3.2006 at about 1.30 p.m., when the above tempo van belonging to the petitioner was driven by the 4th respondent through the Valavanangadi-Vellangallur public road, a motorcycle bearing Registration No.KL-8/AH-821 being driven by the 2nd respondent with the 3rd respondent as a pillion rider hit against the tempo van belonging to the petitioner and as a result of the hit the respondents 2 and 3 suffered injuries and they filed the above petitions claiming compensation for the injuries suffered by them. The Tribunal, after considering the evidence on record, passed Ext.P2 Award granting

compensation on a finding that the petitioner is vicariously liable to give compensation to the respondents 2 and 3 and directed the 1st respondent Insurance Company to indemnify the petitioner. Thereafter, the 1st respondent filed Ext.P3 application under Section 151 of the C.P.C. seeking for correction of Ext.P2 order. On receipt of the said application the Tribunal without issuing notice to the petitioner or other affected parties amended the Award by making the petitioner liable to compensate the insured and has given opportunity to the Insurance Company to recover the amount from the petitioner. In execution of the said order, the recovery proceedings are initiated against the petitioner. According to the petitioner, the correction made in the impugned Award by making the petitioner liable to compensate the insured and granting an opportunity to the Insurance Company to recover the compensation amount from the petitioner is arbitrary, illegal and liable to be quashed in a writ jurisdiction under Article 226 of the

Constitution of India.

2. The 1st respondent has filed counter statement challenging the maintainability of this writ petition. According to the 1st respondent, this writ petition is not maintainable so long as right to appeal against the Award passed by the Tribunal is granted to the affected parties under Section 173 of the Motor Vehicles Act.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

4. The first point to be considered in this writ petition is, whether the writ petition challenging the execution of the Award passed by the Tribunal on an application filed under Section 166(1)(a) of the M.V. Act, is maintainable or not. It is pertinent to note that the main relief sought for by the petitioner is against the recovery proceedings initiated against him on the basis of Ext.P2 Award passed by the Tribunal under Section 166 of the M.V. Act. It is also contended that after the passing of the Award the Tribunal went

wrong by making corrections in the Award with an intent to make the petitioner liable to compensate the insurer and also for granting an opportunity to the Insurance Company to recover the said amount of compensation from the petitioner. Needless to say, this writ petition is filed challenging the Award passed in an application filed under Section 166(1) of the Motor Vehicles Act, claiming compensation for the injuries suffered by the 2nd and 3rd respondents. According to Section 173 of the Motor Vehicles Act, right of appeal is specifically provided to the party, who is aggrieved by the award. In my view, where an appeal is specifically provided under the Motor Vehicles Act itself, the writ petition, invoking jurisdiction under Article 226 of the Constitution of India can never be maintained, as the writ court is not a court of appeal. Further, in my view, even though execution proceedings initiated under Exts.P5 & P6 are sought to be quashed, no such relief could be granted, unless the award from which the execution proceedings

arose is set aside in a duly instituted appeal under Section 173 of the M.V. Act. Thus, this writ petition is not maintainable under law. Hence this writ petition is dismissed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.