

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

WP(C) .No. 14829 of 2010 (C)

IN OPMV 959/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM

PETITIONER(S) :

P.K.RAJESH,
AGED 40 YEARS, S/O. O.KESAVAN NAIR,
55/3321-A, K.S.N.MENON ROAD,
RAVIPURAM, KOCHI-682 016.

BY ADV. SRI.THOMAS M.JACOB.

RESPONDENT(S) :

1. MARY,
AGED ABOUT 62 YEARS, W/O. LATE M.J.STEPHEN,
MYLOTH HOUSE, NORTH OF TOLL GATE ROAD,
EAST OF LOURDES HOSPITAL, VADUTHALA P.O.,
KOCHI-682 023.
2. JOHNSON,
AGED ABOUT 33 YEARS, S/O. LATE M.J.STEPHEN,
MYLOTH HOUSE, NORTH OF TOLL GATE ROAD,
EAST OF LOURDES HOSPITAL, VADUTHALA P.O.,
KOCHI-682 023.
3. MERCY,
AGED ABOUT 32 YEARS, D/O. LATE M.J.STEPHEN,
MYLOTH HOUSE, NORTH OF TOLL GATE ROAD,
EAST OF LOURDES HOSPITAL, VADUTHALA P.O.,
KOCHI-682 023.
4. UNITED INDIA INSURANCE CO. LIMITED,
BY ITS MANAGER, MTPC OFFICE, VETTUKATTIL BUILDINGS,
M.G.ROAD, KOCHI-16.

R1 TO 3 BY ADV. SRI.R.SUDHISH
R1 TO 3 BY ADV. SMT.M.MANJU
R1 TO 3 BY ADV. SRI.K.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXT.P1: TRUE TYPEWRITTEN COPY OF THE AWARD DATED 30/08/2008 IN OP(MV) NO.959/2002.
- EXT.P2: TRUE COPY OF THE CERTIFICATE OF INSURANCE ISSUED BY THE 4TH RESPONDENT.
- EXT.P3: TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE MOTORCYCLE BEARING NO.KL-07-AD-889 TOGETHER WITH COPY OF THE TAX TOKEN.
- EXT.P4: TRUE COPY OF THE REPRESENTATION DATED 14/11/2005 SUBMITTED BY THE PETITIONER THE HON'BLE CHIEF MINISTER.
- EXT.P5: TRUE COPY OF THE PETITION TO CONDONE DELAY NUMBERED AS IA NO.909/2010.
- EXT.P6: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY 4TH RESPONDENT IN IA NO.912/2010.
- EXT.P7: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY 4TH RESPONDENT IN IA. NO.909/2010.
- EXT.P8: TRUE COPY OF THE COMMON ORDER DATED 11/03/2010 PASSED IN IA NO.909/2010, 911/2010 AND 912/2010 IN OP(MV)NO.959/2002.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.14829 of 2010

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Dated this the 1st day of September, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P8 common order passed by the Motor Accidents Claims Tribunal, Ernakulam in I.A Nos.909/2010, 910/2010, 911/2010 and 912/2010 in O.P (MV) No.959/2002.

2. The petitioner, who is the first respondent before the Motor Accidents Claims Tribunal, is aggrieved by Ext.P1 award passed by the Tribunal on the premise that there is no valid insurance for the relevant period. The petitioner alleges that the insurance company has wrongly taken up a contention that there was no valid policy during the relevant period.

3. The alleged accident was on 11.9.2001 and there was, in fact, a valid policy by the 4th respondent as per Ext.P2. The petitioner alleges that though he was *ex parte* in the Tribunal due to a mistake on his part, he was not aware of the award passed

against him. The petitioner stated that he came to know of the award only after receipt of notice in execution petition. Therefore, he filed a review petition producing the insurance policy, explaining the circumstances under which he remained *ex parte*. There was a delay in filing the review petition. As per Ext.P8 order the petitions were dismissed. It is with this background, the petitioner has approached this Court.

4. Arguments have been heard.

5. The main reason pointed out in Ext.P8 common order by the Tribunal for dismissing the petitions is that the award cannot be tilted as the same would cause undue hardship to the claimant. The Tribunal proceeded on the assumption that the review petition is maintainable only for correction of an error apparent on the face of record. However, the review petition is maintainable on the basis of the error apparent on the face of record and also for any other sufficient reason.

6. The petitioner points out that the offending vehicle was covered by a valid policy. Therefore, substantial justice demands

that the insurance company which had issued a valid policy has to be made liable to pay the award amount if the petitioner's case is true. Sufficient reasons are stated by the petitioner for the delay in filing the review petition. The explanation given by the petitioner ought to have been taken as sufficient reason and the delay ought to have been condoned, especially taking into account the necessity to do substantial justice.

Therefore, the writ petition is allowed. Ext.P8 is quashed. The Motor Accidents Claims Tribunal is directed to reconsider the review petition in the light of what has been stated above, after affording the petitioner an opportunity to substantiate his case that the vehicle was covered by a valid policy, under due notice to the insurance company as well as the claimant. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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