

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

WP(C).No. 35643 of 2007 (R)  
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OPMV 3450/2001 of M.A.C.T.,ERNAKULAM DATED 06.05.2006

PETITIONER:  
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THE ORIENTAL INSURANCE CO.LTD.  
METRO PALACE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:  
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1. SAJEEV SAMUEL @ WILFRED NORMAN  
S/O.SAMUEL, RESIDING AT H.NO.12/320 A, COCHIN  
COLLEGE, ROAD, PANDIKUDY  
COCHIN-2.
2. HILDA XAVIER @ MARGRET FERNANDEZ,  
W/O.FRANCIS XAVIER, SWASTHAM, RESIDING AT  
METHASSERY, HOUSE NO.27/1762, BOAT JETTY ROAD  
ST.PETERS LANE, VADUTHALA P.O., COCHIN-23.
3. REENA SUNNY @ ELEZEBATH FERNANDEZ,  
W/O.SUNNY MENDEZ, SWASTHAM, RESIDING AT  
MOTHER TERESA LANE, VADUTHALA P.O., COCHIN-23.
4. SEENA SAMUEL @ SEENA NAZEER,  
W/O.NAZEER, SWASTHAM, RESIDING AT  
H.NO.7/293, PANAYAPPILLY, KOCHI-2.
5. MATHUNNI SAMUEL,  
S/O.LATE SAMUEL MADATHIL, XII/1320 A, SAMSON VILLA  
COLLEGE ROAD, PANDIKKUDI, KOCHI - 2.

WP(C).No. 35643 of 2007

6. ELIZABETH EAPEN, W/O.EAPEN, XII/1320 A,  
SAMSON VILLA, COLLEGE ROAD, PANDIKKUDI  
KOCHI-2.

7. UNNIKRISHNA KURUP, AKIL HOUSE,  
THRIKKARIYOOR, KOTHAMANGALAM.

8. THE EXECUTIVE ENGINEER, ELECTRICAL  
DIVISION, KERALA STATE ELECTRICITY BOARD  
MUVATTUPUZHA.

9. DISTRICT INSURANCE OFFICE,  
KERALA STATE INSURANCE DEPARTMENT, ERNAKULAM.

10. THE HON'BLE MOTOR ACCIDENTS CLAIMS  
TRIBUNAL, ERNAKULAM.

R8 BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B  
R1 TO R4 BY ADV. SRI.P.C.JEEVA  
R8 BY ADV. SRI.K.S.ANIL, SC, KSEB  
R1-R4 BY ADV. SRI.K.JANARDHANAN  
R1-R4 BY ADV. SRI.K.J.MANU RAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

WP(C).No. 35643 of 2007

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : TRUE COPY OF THE CLAIM PETITION O.P.(MV) 3450/01 FILED BY RESPONDENTS 1 TO 4.
- P2 : TRUE COPY OF THE CLAIM PETITION IN O.P.(MV) 1490/04 FILED BY RESPONDENTS 5 AND 6.
- P3 : TRUE COPY OF THE JUDGMENT W.P.(C) NO.23691/04.
- P4 : TRUE COPY OF THE AWARD DATED 06.05.06.
- P5 : TRUE COPY OF THE APPLICATION FILED TO SET ASIDE THE EXPARTE AWARD.
- P6 : TRUE COPY OF THE COMMON ORDER DATED 13.2.2007.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**SHAJI P. CHALY, J.**

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**W.P(C). No.35643 of 2007**  
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**Dated this the 16<sup>th</sup> day of June, 2015**

**JUDGMENT**

This writ petition is filed by the Oriental Insurance Company Limited, Ernakulam North Branch with the main prayer to quash Ext.P4 award passed by the Motor Accident Claims Tribunal, Ernakulam in O.P.(MV) No.3450 of 2001 and 1490 of 2004.

2. The thrust of the contentions advanced by the petitioner is that Ext.P4 award was passed by the learned Tribunal by taking into account a compromise entered into between two rival claimants in the aforesaid original petitions pending before the Tribunal and the petitioner/insurance company was not a party to the said compromise. The respondents/claimants have entered appearance through counsel in the above writ petition.

3. Heard the learned Standing counsel for the petitioner and the learned counsel for respondents 1 to 4.

4. It is an admitted fact that even though a compromise was entered into between the rival claimants in the two claim

petitions, the petitioner/insurance company was not a party to the same and without properly advertng to the situation prevailing in the cases, the learned Tribunal has passed a common award and fastened liability on the petitioner/insurance company for payment of compensation. In fact the compromise entered into between the rival claimants was regarding the apportionment of the expected award to be passed by the learned Tribunal and petitioner/insurance company was not a party to the same. Therefore, obviously the learned Tribunal could not have passed an award on the basis of the said compromise entered into between the rival claimants with regard to the nature of apportionment to be made. But unfortunately the Tribunal overlooking the nature of compromise has passed an award fixing compensation in the claim petitions and fastened the liability on the petitioner/insurance company. According to me, the said award passed without providing opportunity to the petitioner/insurance company to contest the proceedings cannot be sustained under law. Therefore, the award is liable to be set aside and accordingly I do so.

5. Taking into account the date of accident i.e. 19.01.2001

and long pendency of the writ petition before this Hon'ble Court, it is only appropriate that the Tribunal is directed to take decision in the referred claim petitions within a time frame. Therefore, I set aside Ext.P4 award passed by the Motor Accidents Claims Tribunal, Ernakulam dated 06.05.2006 in O.P. (MV) Nos.3450 of 2001 and 1490 of 2004 and direct the Tribunal to take a decision after providing necessary opportunity to the parties to the litigation within a period of four months from today.

6. Parties shall appear before the Tribunal enabling it to proceed with the matter, on 30.06.2015. Any of the claimants in the aforesaid claim petitions is directed to serve a copy of the compromise petition entered into by the rival claimants to the counsel for the insurance company on its appearance on 30.06.2015 and also a copy of this judgment to the Tribunal .

Writ petition is disposed of as above and in the facts and circumstances without any cost.

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

smv