IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE SATHISH NINAN

TUESDAY, THE 01ST DAY OF DECEMBER 2020/10TH AGRAHAYANA, 1942

O.P.(MAC) No.107 OF 2016(O)

(AGAINST THE ORDER IN OP(MV) 795/2009 DATED 06-08-2016 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE)

PETITIONER/PETITIONER:

M.K. MANOHARAN, AGED 51 YEARS, S/O. SUKUMARAN,
MUKAVANKANDIYIL HOUSE, PUTHIYAPPA,
PUTHIYANGADI (P.O), KOZHIKODE.

BY ADV. SRI.P.V.ANOOP

RESPONDENTS/RESPONDENTS:

1 VIBINA, AGED 27 YEARS, W/O. LATE SHYAM PRASAD,
PADINJARE VATTAKANDY HOUSE, PUTHIYANGADI,
KOZHIKODE DISTRICT, PIN 673 021.

2 USHA, AGED 57 YEARS, W/O. SUKUMARAN,
PADINJARE VATTAKANDY HOUSE, PUTHIYANGADI,
KOZHIKODE DISTRICT, PIN 673 021.

3 SHARAN PRASAD (MINOR), AGED 7 YEARS,
REPRESENTED BY THE 1ST RESPONDENT, HIS MOTHER,
PADINJARE VATTAKANDY HOUSE, PUTHIYANGADI,
KOZHIKODE DISTRICT, PIN 673 021.

4 SHAIJU M.K, AGED 35 YEARS, S/O.SHANMUGHAN,
MUKAVANKANDIYIL HOUSE, PUTHIYAPPA,
PUTHIYANGADI P.O, KOZHIKODE, PIN 673 021.

R1 BY ADVS. SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN
SRI.P.S.SREEDHARAN PILLAI
(ELEVATED AS GOVERNOR)
SRI.T.K.SANDEEP

THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 01.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The dismissal of a claim petition filed under Order XXI Rule 58 of the Code of Civil Procedure, is under challenge in this original petition.

2. Heard Sri.Anoop P.V, learned counsel for the petitioner and Sri.Arjun Sreedhar, learned counsel for respondents 1 to 3.

3. The O.P.(MV) was instituted against the 4th respondent by respondents 1 and 2, claiming compensation in relation to an accident that occurred on 13.4.2009. The O.P. was filed on 11.6.2009. Along with the original petition I.A.No.231/2009 was filed seeking attachment of the vehicle in question (KL-11 AA-847). Notice was ordered on the application. After service of notice on the 4th respondent, who was the respondent in the

said proceeding, an order of attachment was passed on 17.7.2009. Subsequently an award was passed on the claim petition.

4. In the execution proceeding, the petitioner herein filed a claim petition contending that he had purchased the vehicle in question in April 2009 and that the registration was transferred in his name on 4.7.2009. The sale was prior to the original petition and the attachment proceedings; he is a *bona fide* purchaser for value, and accordingly sought for lifting of the attachment over the vehicle.

5. As rightly noticed by the tribunal, the petitioner has not mentioned the date of purchase. The sale is not evidenced by any sale letter or document relating to sale. The O.P.(MV) along with

the attachment application was filed on 11.6.2009 on which, notice was ordered. The transfer of registration was on 4.7.2009, which is subsequent thereto. The petitioner is alleged to be a close relative of the 4th respondent. On consideration of the entire materials, the Tribunal has arrived at a conclusion that the alleged sale transaction is not *bona fide* and that the transfer was only intended to defeat the O.P(MV). The finding of the tribunal is based on materials. There is no illegality with the order impugned.

The Original Petition fails and is accordingly dismissed.

It is reported that the execution petition E.P.No.54 of 2015 presently stands dismissed. In view of the fact that sale of the vehicle in

question was deferred by this Court and that the order has been in force till today, the execution court shall have the EP restored back to file with notice to the judgment debtor-4th respondent and taken to a logical conclusion expeditiously.

Registry to forward a copy of this judgment to the Tribunal, forthwith.

Sd/-

SATHISH NINAN

JUDGE

ss

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF THE PETITION UNDER ORDER 21 RULES 58 BY THE PETITIONER DATED 28-03-2016**
EXHIBIT P2	**TRUE COPY OF THE CERTIFICATE OF REGISTRATION IN THE NAME OF THE PETITIONER.**
EXHIBIT P3	**TRUE COPY OF THE RECEIPT DATED 09-05-2009 SHOWING THAT THE FINANCE IN THE VEHICLE WAS CLOSED BY THE INDUSIND BANK.**
EXHIBIT P4	**TRUE COPY OF THE LETTER DATED 13-05-2009 FROM THE INDUSIND BANK TO THE REGIONAL TRANSPORT OFFICER.**
EXHIBIT P5	**TRUE COPY OF THE ORDER DATED 01-07-2009 IN I.A NO 2314/2009 IN OP(M.V) NO 795/2009 ON THE FILE OF THE PRINCIPAL MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE.**
EXHIBIT P6	**TRUE COPY OF THE COUNTER DATED 26-04-2016 IN EXHIBIT P1 PETITIONER BY THE 4TH RESPONDENT.**
EXHIBIT P7	**TRUE COPY OF THE ORDER DATED 06-08-2016 IN E.A NO 15/2016 IN E.P NO 54/2015 IN O.P (M.V) NO 759/2009 ON THE FILE OF THE PRINCIPAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE.**