

**Patrick Thomas Vs. State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1095442](http://sooperkanoon.com/1095442)

**Court :** Kerala

**Decided On :** Sep-30-2013

**Judge :** Honourable Mr.Justice Thomas P.Joseph

**Appellant :** Patrick Thomas

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON MONDAY,THE30H DAY OF SEPTEMBER20138TH ASWINA, 1935 WP(C). No. 20306 of 2013 (K) ----- PETITIONER: ----- K.V. EYYOB, AGED57YEARS S/O. VARKEY, KALAKUDIYIL, PINDIMANA P.O. KOTHAMANGALAM, ERNAKULAM DISTRICT BY ADV. SRI. ALEXANDER JOSEPH RESPONDENTS: ----- 1. THE KERALA STATE BEVERAGES (M & M) CORPORATION LTD. REPRESENTED BY ITS MANAGING DIRECTOR THIRUVANANTHAPURAM-695 001 2. THE REGIONAL MANAGER KERALA STATE BEVERAGES (M & M) CORPORATION LTD. TRIPUNITHURA, ERNAKULAM-682 301 3. THE MANAGER UNITED INDIA INSURANCE CO.LTD., PUKUNNEL BUILDINGS CHERIYAPALLITHAZHAM, KOTHAMANGALAM, ERNAKULAM DISTRICT R1,R2 BY ADV. SRI. C. S.AJITH PRAKASH, SC, BEVERAGES CORPORATION R3 BY SRI. P.K. MANOJKUMAR THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON3009-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 20306 of 2013 (K) APPENDIX PETITIONER'S EXHIBITS:-  
----- EXHIBIT P1 - COPY OF THE LEASE AGREEMENT  
DATED14/2011 EXHIBIT P2 - COPY OF THE INSURANCE POLICY  
NO.10181/46/06/90/00000134 EXHIBIT P3 - COPY OF THE LETTER  
DATED1810/2011 SENT BY THE PETITIONER TO THE MANAGER OF1T  
AND2D RESPONDENTS EXHIBIT P4 - COPY OF THE FIR NO.980  
DATED57/2013 AND F.I.STATEMENT EXHIBIT P5 - COPY OF THE ESTIMATE  
PREPARED BY THE LICENSED CIVIL ENGINEER MURALI K.KUMAR EXHIBIT  
P6 - COPY OF THE LETTER DATED97/2013 OF THE PETITIONER TO THE 1ST  
RESPONDENT EXHIBIT P7 - COPY OF THE LETTER DATED87/2013 OF THE  
PETITIONER TO THE3D RESPONDENT EXHIBIT P8 - COPY OF THE LAWYER  
NOTICE DATED247/2013 SENT TO THE RESPONDENTS EXHIBIT P9 - COPY  
OF THE REPLY DATED0208.2013 TO EXT.P8 LAWYER NOTICE SENT BY THE  
COMPANY SECRETARY OF THE1T RESPONDENT. RESPONDENTS'  
EXHIBITS:- NIL ----- //TRUE COPY// P.A. TO JUDGE SP  
P.R. RAMACHANDRA MENON, J.

----- W.P.C.No.20306  
OF2013----- Dated this the 30th day of September, 2013.

## JUDGMENT

The petitioner has approached this Court with the following prayers:- "i) Issue a writ of mandamus or any other appropriate writ order or direction, directing the respondents to process and settle the claim of the petitioner for compensation for the loss suffered by the petitioner due to the fire caused to the building No.XXVI/241 B&C in Ward No.26 of Kothamangalam Municipality; ii) Issue a writ of mandamus or any other appropriate writ order or direction, directing the 3rd respondent to give copy of the survey report and claim form to the petitioner and settle the claim of the petitioner in accordance with law; iii) Issue such other appropriate writ, order or direction that this Honourable Court may deem fit and proper in the facts and circumstance of the case." 2. The petitioner claims to be the owner of the Building No.XXVI/241 B&C in Ward No.26 of Kothamangalam Municipality. By virtue of Ext.P1 agreement dated 01.04.2011, the building belonging to the petitioner was let out to respondents 1 and 2 for conducting a

foreign liquor retail outlet. The building was insured with the 3rd respondent, to the stipulated extent as covered by Ext.P2 Policy taken by the petitioner. The building was gutted on fire broke out on 05.07.2013 at about 5 a.m. and the entire stock W.P.C.No.20306 OF20132 of liquor was also taken by flames. Ext.P4 is a copy of the FIR.

3. According to the petitioner, huge loss has been resulted because of the fire and an estimate has been prepared by a Civil Engineer as borne by Ext.P5. The petitioner submitted Ext.P6 application for compensation before the 1st respondent. Similarly, Ext.P7 claim petition was preferred before the 3rd respondent for sanction of the due amount by virtue of Ext.P2 Policy. Since, nothing transpired in the positive, the petitioner has approached this Court seeking for immediate intervention and to cause the disbursement of the due amount.

4. The learned counsel appearing for the 3rd respondent submits on instruction, that immediately on coming across the fire mishap, a duly qualified and competent Surveyor was deputed to assess the loss, who conducted the survey and a report was submitted. After considering the claim in the light of the survey report, it was found that a total sum of Rs.2,15,926/- (Rupees Two lakhs fifteen thousand nine hundred and twenty six W.P.C.No.20306 OF20133 only) was liable to be paid to the petitioner and accordingly, the claim was finalised.

4. It is stated that a Discharge Voucher has already been forwarded to the petitioner in this regard by registered post, but the petitioner is still to respond to the same. It is added by the learned counsel that, immediately on furnishing the Discharge Voucher, the 3rd respondent is ready and willing to disburse the due amount to the petitioner.

5. The learned counsel for the petitioner submits that the loss has not been properly assessed by the 3rd respondent, more so when the claim is much higher and the Policy coverage under Ext.P2 is to a substantial extent, for which the petitioner has already paid the requisite premium, whereas the amount now stated as finalised to be disbursed to the petitioner is only a paltry amount of Rs.2,15,926/-. It is also pointed out that, since the building was let out to the respondents 1 and 2, they are also liable to satisfy the loss sustained by the

petitioner, because of W.P.C.No.20306 OF20134 the fire occurred when the building was in the possession and enjoyment of such respondents.

6. The learned Standing Counsel for the respondents 1 and 2 submits that the extent of damage and the eligibility to get damages from the respondents 1 and 2 are disputed and that, it is for the petitioner to establish the facts and figures in this regard. In any view of the matter, in so far as the involvement of the 3rd respondent by virtue of Ext.P2 Policy is concerned, the admitted extent of liability intended to be disbursed is only to an extent of Rs.2,15,926/-. In the said facts and circumstance, the petitioner is set at liberty to produce the Discharge Voucher before the 3rd respondent, upon which, the admissible amount shall be disbursed to the petitioner forthwith.

7. With regard to the rights and liberties of the petitioner to claim the balance amount, if at all the loss sustained by him is more than the extent that is being compensated by the 3rd respondent, it is always for the petitioner to approach the W.P.C.No.20306 OF20135 competent Civil Court for necessary reliefs, which is to be considered and disposed of on the basis of the necessary pleadings and evidence to be let in; which will include the right to proceed against all the respondents, in accordance with law. Writ petition is disposed of accordingly. P.R. RAMACHANDRA MENON, JUDGE sp

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