

Poulose Vs. Abubacker

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Court : Kerala

Decided On : Feb-20-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Poulose

Respondent : Abubacker

Judgement :

IN THE HIGH COURT OF KERALAATERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN THURSDAY,THE20H DAY OF FEBRUARY20141ST PHALGUNA, 1935 OP (MAC).No. 4474 of 2013 (O) ----- AGAINST THE AWARD IN OPMV1272002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA DATED0907-2003 PETITIONER(S)/PETITIONER/PETITIONER:-:

----- POULOSE, AGED58YEARS S/O.KURIAKOSE, PALANAD HOUSE, SHED CHEEYAMBAM P.O., PULPALLY, S.BATHERY TALUK WAYANAD DISTRICT. BY ADV. SRI.S.M.PRASANTH RESPONDENT(S)/RESPONDENTS:-:

----- 1. ABUBACKER, S/O.MOHAMMED, ACHIYIL HOUSE, KARANTHOOR KOZHIKODE DISTRICT (DRIVER OF KSRTC BUS NO.KL-15-3245) PIN - 680 002.

2. MANAGING DIRECTOR, KSRTC, THIRUVANANTHAPURAM - 695 001. R2 BY SRI.BABU JOSEPH KURUVATHAZHA,STANDING COUNSEL,KSRTC THIS

OP (MAC) HAVING COME UP FOR ADMISSION ON 2002-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (MAC).No. 4474 of 2013 (O) APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1. COPY OF THE

ORDER

OF THE TRIBUNAL IN O.P.(MV)NO.127 OF 2002 DATED 09.07.2003 ON THE FILES OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA. RESPONDENT(S)' EXHIBITS ----- NIL // TRUE COPY // P.A. TO JUDGE sou. K. VINOD CHANDRAN, J -----
----- O.P(MAC) No. 4474 of 2013 ----- Dated this the 20th day of February, 2014

JUDGMENT

The petitioner challenges Ext.P1 order dated 09.07.2003 of the Tribunal, in this petition under Article 227. By Ext.P1 the Tribunal, dismissed the claim filed by the petitioner since, the petitioner and the counsel were absent and also for the reason that no batta had been paid for issuing notice to R1. It is to be noticed that this petition under Article 227 is filed after about 11 years from the date of dismissal of the claim petition. It is also to be noticed that the petitioner has not approached the Tribunal with an application under Order 9 Rule 4 for setting aside the dismissal for default.

2. It is vehemently argued that the petitioner has suffered injury in an accident and the fact that OPMAC44742013. :

2. : the accident occurred and the petitioner suffered injury being undisputed, the petitioner's claim for compensation should be considered.

3. This Court called for the records of the case. It is seen that on 25.04.2002 it was posted for appearance of R1 and R2 who were merely called absent and the case was posted for written statement. In July 2002 fresh notice was ordered to R1. Then, when the matter was called on 23.12.2002 neither the petitioner nor the counsel were present. Hence, fresh notice was directed against R1 and it was also

directed to issue notice to the petitioner. The matter was then posted to 25.02.2003, when it was reposted to 08.05.2003. On 08.05.2003 the Presiding Officer was on leave and the case stood adjourned to 02.07.2003. On 02.07.2003 there was a further order to pay batta within three days and the case was posted to 09.07.2003. Even on the said date neither OPMAC44742013. :

3. : was the batta paid nor was there appearance of the petitioner or counsel and hence the Tribunal passed Ext.P1 order.

4. In fact, on going through the records, it is seen that when notice was ordered on 23.12.2002, it was ordered to the petitioner also. Notice is seen issued to the petitioner pointing out that the original petition when taken up for hearing on 23.12.2002, neither the petitioner nor the counsel was present and also intimating the next date of posting as on 25.02.2003.

5. The learned counsel for the petitioner would rely on Manoharan v. Sivarajan and others [(2013) 4 KHC693(SC)], wherein the Hon'ble Supreme Court had declared that in considering the question of limitation, and permitting a person seeking for adjudication of his grievance; even when there is considerable delay, the approach of the Court OPMAC44742013. :

4. : should be liberal. The learned counsel would specifically point out that the Hon'ble Supreme Court held that "If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor"(sic).

6. In the present case, as was noticed earlier, no application to set aside the dismissal of the claim was filed before the Tribunal. A petition under Article 227 has been filed after 11 years. The averments in the petition shows that there is no satisfactory explanation for the long delay. The petitioner rests contend, with the averment that he was under the bona fide belief that the matter was pending consideration by the Tribunal; for a long eleven years. The other averments are with respect to there being no default in taking steps, since it was an inadvertent omission on the part of the counsel for the petitioner. OPMAC44742013. :

5. : The petitioner's explanation; that is to say, whatever has been proffered, cannot be said to be satisfactory. The Court has to consider the explanation offered in the context of the considerable delay of more than 11 years.

7. The respondents before the Tribunal are also entitled to expect certain amount of finality in matters, especially, when the matter stood dismissed for default more than 11 years back. Adducing evidence in the matter, wherein the accident had occurred more than 11 years before, and defending the claim application would be downright impossible at this distance of time. In the present case, what assumes significance is that, the enquiry as to whether there are any mala fides or whether it is a dilatory tactic does not at all arise. This Court has to look into the explanations offered, which again, is offered under a petition invoking supervisory OPMAC44742013. :

6. : jurisdiction of this Court under Article 227; when the petitioner has not approached the Tribunal even now to set aside the dismissal of the claim. The dictum in Manoharan (supra) is not applicable on facts and is not relevant in law. On facts, the delay is huge and the explanation offered is rudimentary and fragile and falls short of being satisfactory. In law this is not a proceeding wherein explanation of delay and the consideration of the same assumes any relevance. The petitioner has invoked the supervisory jurisdiction of this Court to set aside the dismissal of a claim petition for default in appearance, that too eleven years from the date of dismissal.

8. The said view is further fortified by the decision of the Hon'ble Supreme Court in Parimal v. Veena [(2011) 3 SCC545, wherein it was held: "In view of the aforesaid statutory requirements, the High Court was duty-bound to set aside at least the OPMAC44742013. :

7. : material findings on the issues, in spite of the fact that approach of the Court while dealing with such an application under Order 9 Rule 13 CPC would be liberal and elastic rather than narrow and pedantic. However, in case the matter does not fall within the four corners of Order 9 Rule 13 CPC, the Court has no jurisdiction to set aside an ex parte decree". Herein, it is to be specifically noticed, no application under Order 9 Rule 4 was made, the consideration of which would be governed by

principle akin to that governing an application under Order 9 Rule 13.

9. The learned counsel also refers to the Full Bench decision of this Court reported in Jacob Thomas v. Pandian (2005) 4 KLT545(F.B), wherein this Court had directed the Tribunals not to dispose of matters on merit, in the event of non-appearance of the parties but to dismiss the same for default. This was to ensure that the interest of the litigants are safeguarded insofar as giving them an OPMAC44742013. :

8. : opportunity to approach the Tribunal itself, which would be a more efficacious remedy. In this case, as was noticed above, no such application has been made. The learned counsel fervently puts forward a plea that he may be permitted to move such an application, before the tribunal. In the context of the examination of records, and the facts revealed therefrom this Court is not convinced that the petitioner can be reserved such liberty. The writ petition, hence, is dismissed in limine. Sd/- (K. VINOD CHANDRAN, JUDGE) jma (true copy)

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