

Bhaskaran Vs. Narayanan

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Court : Kerala

Decided On : Feb-19-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Bhaskaran

Respondent : Narayanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE 19TH DAY OF FEBRUARY 2014 30TH MAGHA, 1935 OP (MAC).No. 4161 of 2013 (O) ----- IA NO. 5570/2010, IA NO. 5571/2010 & IA NO. 2705/13 IN OP(M.V) 1141/04 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALAKKAD ----- PETITIONER/PETITIONER/1ST RESPONDENT: ----- BHASKARAN, S/O. PAZHANAN, RAMLATH HOUSE, VADATHODE ANIKKODE, CHITTUR POST PALAKKAD. NOW WORKING AS MARKETING EXECUTIVE, 'SREE ENTERPRISES, 12, DURAI SWAMY PURAM 2D STREET, NEAR RA AGENCY, TIRUPUR-02. BY ADVS.SRI.SAJAN VARGHEESE K. SRI.LIJU. M.P RESPONDENTS/RESPONDENTS/CLAIMANTS AND 2D RESPONDENT: ----- 1. NARAYANAN, S/O. ARU, CHANNATHU HOUSE, CHANNATHODE CHITTUR.P.O., PALAKKAD-678101.

2. THE CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD. 5TH FLOOR, TIAM HOUSE, 72 RAJAJI SALAI, CHENNAI-600001. R1 BY ADV. SRI.K.P.BALAGOPAL R2 BY SRI.MATHEWS JACOB SENIOR ADVOCATE R2 BY ADVS. SRI.P.JACOB MATHEW SMT.PREETHY R. NAIR THIS OP (MAC) HAVING BEEN FINALLY HEARD ON 19-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BP OP (MAC).No. 4161 of 2013 (O)

----- APPENDIX PETITIONER(S)' EXHIBITS -----

P1. TRUE COPY OF THE AWARD DATED 22-09-2013 PASSED IN OPMV NO. 1141/04 ON THE FILE OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALAKKAD. P2. TRUE COPY OF THE IA 5571/2010 IN OP NO. 1141/04 ON THE FILE OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD. P3. TRUE COPY OF THE IA NO. 5570/2010 IN OP NO. 1141/04 ON THE FILE OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALAKKAD. P4. TRUE COPY OF THE PETITION VIZ. I. NO. 2705 IN IA NO. 5571/2010 IN OP NO. 1141/04 ON THE FILE OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALAKKAD. P5. TRUE COPY OF THE

ORDER

DATED 10-13 PASSED IN I.A. NO. 5570/2010 AND IN IA NO. 5571/2010 IN OP NO. 1141/04 ON THE FILE OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALAKKAD. P6. TRUE COPY OF THE

ORDER

DATED 10-13 PASSED IN I.A. NO. 2705/13 IN IA NO. 5571/2010 IN OP NO. 1141/04 ON THE FILE OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALAKKAD. P7. TRUE COPY OF THE

ORDER

DATED 10-13 PASSED IN IA NO. 3758/2010 IN OP NO. 1141/04 ON THE FILE OF MOTOR ACCIDENT CLAIMS TRIBUNAL PALAKKAD. RESPONDENT(S)' EXHIBITS : NIL. ----- //TRUE COPY// P.A. TO JUDGE BP K. VINOD CHANDRAN, J.

===== O.P.(M.A.C) No. 4161 of 2013
===== Dated this the 19th day of February, 2014

JUDGMENT

The petitioner is aggrieved by the ex-parte award passed by the Motor Accidents Claims Tribunal, Palakkad, evidenced by Ext. P1. The brief facts are that, the claimant being the 1st respondent herein, was travelling along with the petitioner who was the owner and driver of a goods vehicle. An accident occurred and both the petitioner and the 1st respondent suffered injuries. The 1st respondent filed a claim petition before the MACT, Palakkad, which was not contested by the petitioner herein and award was passed ex-parte. The Court directed an amount of Rs. 70,473/- to be paid as compensation to the claimant / 1st respondent. The Tribunal having found that the petitioner was carrying a passenger in a goods vehicle, held that the insurer's liability is discharged. Further, negligence was found on the petitioner and the liability to pay compensation was mulcted on the owner / driver, being the petitioner herein. O.P.(M.A.C) No. 4161 of 2013 2 2. The petitioner with about 550 days delay filed an application for setting aside the ex-parte order along with an application to condone delay. The Tribunal by Ext. P5 found that, there is no convincing explanation proffered by the petitioner and hence dismissed the applications for setting aside the ex-parte award as also the application for condonation of delay. An application to adduce evidence in the delay petition also was dismissed as per Ext. P6.

2. The petitioner prays that, the ex-parte award may be set aside and the petitioner be permitted to adduce evidence so as to convince the Tribunal that the insurer cannot be absolved from the liability. The petitioner's contention is that, in fact, it was permissible for the petitioner to carry two passengers in the goods vehicle. In the instant case, the claimant was the owner of the goods which the petitioner was carrying in his goods vehicle and it was for the protection of the goods, as also on the claimant's request that he was permitted to travel along with the goods. These are all contentions which the petitioner could have urged before the Tribunal. This Court O.P.(M.A.C) No. 4161 of 2013 3 cannot enter into any findings on facts at this stage. This Court in the present Original Petition is only concerned with the issue of dismissal of the application to set aside the ex-parte award as also the application for condonation of delay.

3. I have heard the learned counsel appearing for the claimant as also the learned senior counsel for the insurer.
4. The petitioner in fact was ready to give evidence so as to prove the averments made in the application for condonation of delay. However, the Tribunal had rejected the same. This Court in such circumstance would have directed the Tribunal to permit the petitioner to adduce evidence, so as to satisfy the Tribunal as to the reasons for the delay occasioned. However, considering the fact that interest would run on the claim amounts, it is deemed fit that, the petitioner be permitted to adduce evidence in the original application itself. This Court is fortified in taking such a view by two unreported decisions of this Court in O.P (M.A.C)No. 1311 of 2012 and O.P(M.A.C) No. 2904 of 2012 rendered on 24.01.2014 and 22.02.2013, wherein this Court O.P.(M.A.C) No. 4161 of 2013 4 invoked the supervisory powers under Article 227 of the Constitution of India to set aside an ex-parte award on condition of petitioner depositing = of the amounts awarded. In the present case, the amount awarded is Rs. 70,473/-. In the event of the petitioner depositing an amount of Rs. 35,000/- with the Tribunal within a period of one month from the date of receipt of a copy of this judgment, the ex-parte award, Ext. P1 shall be set aside only to the extent of the insurer being discharged from his liability. The Tribunal shall take evidence of the petitioner and permit the insurance company also to adduce any further evidence and decide on the question of the liability of the insurer alone. The amount of Rs. 35,000/- directed to be deposited herein shall be paid to the claimants immediately on such deposit. The insurance company at any rate cannot be held liable for the interest between 22.04.2009, the date on which Ext. P1 award was passed and 07.10.2013, the date of dismissal of the application to set aside the ex-parte award. If the insurer is eventually found liable, the interest for the said period shall be deducted from the Rs. 35,000/- O.P.(M.A.C) No. 4161 of 2013 5 now directed to be deposited and adjusted to the amounts due to the claimants and the balance award amounts with interest thereon shall be paid to the claimants by the insurer. After deduction of the interest, as noticed above, from the amount of Rs. 35,000/-, the balance if any available, shall be refunded to the petitioner; on the insurer making such deposit. The Original Petition is allowed on the above conditions, setting aside Ext. P1 only to the extent provided herein above. The Tribunal shall expedite the consideration.

The claimants need not be participated at all, since the question to be considered would be only the liability of satisfying the claim amounts. The parties shall appear before the Tribunal on 21.03.2014. The recovery initiated shall be kept in abeyance till final orders are passed in the O.P.M.V. Original Petition allowed with the above directions, leaving the parties to bear their costs. Sd/- K. VINOD CHANDRAN, JUDGE SB

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